

89-1259
No. _____

Supreme Court, U.S.

FILED

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JOSEPH F. SPANIOL, JR.
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In the
Supreme Court of the United States

OCTOBER TERM, 1989

ULRICH HUYSSEN,
Petitioner,

versus

FIRST UNION HOME EQUITY CORPORATION
(formerly, First Union Mortgage Corporation),
Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

1. Whether where it is clearly and convincingly established by the record that petitioner met and satisfied the criteria of credit-worthiness under respondent's "Lending Policy Manual"; and where respondent denied to petitioner an extension of credit in the amount of \$30,900.00 for the purported reason of insufficient income, based on respondent's own esoteric calculation of petitioner's income-to-debt ratio contrary to respondent's own formula set out by respondent in respondent's own Lending Policy Manual (App. L, pp. 1L-12L) is a valid permit for the prudent inference to be drawn that respondent's denial of the extension of credit to the petitioner, ULRICH HUYSSEN, was because of his national origin (German), or his Christian religious denominational affiliation (a Gospel Minister of the Interdenominational World Missions for Jesus); and that, therefore, the respondent's denial of the extension of credit to the petitioner was unlawfully impermissible, in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f (App. F, pp. 1f-16f); and that respondent's articulation for the denial is a pretext?
2. Whether where the evidence adduced on trial, if that evidence had been by the Court presented to the jury, was sufficient to reasonably presume that the natural inference to be drawn by the jury, if the Court had not withdrawn the jury, would have been in accord with that of the petitioner, i.e., but for reasons of unlawfully prohibitory discrimination based on national origin or religion, vel non, the respondent would not have rejected Petitioner's "Loan Application" (App. J, pp. 1j-11j) for an extension of credit in the amount of \$30,900.00;

and, therefore, the Trial Court committed reversible error by withdrawing the jury and refusing to submit the case for jury determination?

3. Whether the Trial Court by denying petitioner's timely filed Motion for New Trial (App. O, pp. 1o-16o) committed reversible error where respondent was requested under discovery (App. N, pp. 1n-15n) to produce its relevant Loan Register; but refused to do so on grounds that no such register was kept or maintained by respondent; but, however, it was adduced on trial that the requested information was kept and maintained by the respondent in its file cabinet and not in a Loan Register; and where, therefore, petitioner discovered that respondent had, or did for other loan applicants, in its calculation of income-to-debt ratio, treated/figured within its formula verified tax depreciations as nontaxable income; but, however, in calculating petitioner's income-to-debt ratio the respondent, within its formula, treated/figured petitioner's verified tax depreciations as taxable income, differently from other loan applicants and contrary to the requirements of its Lending Policy Manual (App. L, pp. 6L-7L), and, thereby, rejected the loan application of petitioner and denied to him the extension of credit on pretext of insufficient income, in violation of ECOA, 15 U.S.C. §§ 1691-1691f (App. F, pp. 1f-16f)?

LIST OF PARTIES TO THE PROCEEDING

THE PETITIONER IS:

ULRICH HUYSSEN, who was born of German parents in Meiningen, Germany, and who came to the United States on May 22, 1964, visiting, and was issued an "Immigration Visa" on January 27, 1965, is, thereby, a permanent resident of the United States with the "Green Card."

THE RESPONDENT IS:

FIRST UNION HOME EQUITY CORPORATION (formerly, First Union Mortgage Corporation), is a business corporation with its principal place of business in Charlotte, North Carolina, engaged in the business of extending credit and authorized to do business in East Baton Rouge Parish, State of Louisiana; and is a "creditor" by definition under 15 U.S.C. § 1691a(e) (App. F, p. 5f).

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None.	

No._____

**In the
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ULRICH HUYSSEN,
Petitioner,

versus

**FIRST UNION
HOME EQUITY CORPORATION**
(formerly, First Union Mortgage Corporation),
Respondent.

PETITION FOR A WRIT OF CERTIORARI

The petitioner, ULRICH HUYSSEN, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, pp. 1a-4a) is not reported; and the reasons for judgment (App. B, pp. 1b-2b), judgment (App. C, p. 1c), and ruling on motion for new trial (App. D, pp. 1d-2d) of the District Court are not reported.

JURISDICTIONAL STATEMENTS

The opinion of the Court of Appeals (App. A, pp. 1a-4a), of which review is sought, was entered on October 18, 1989; and was received by Petitioner's counsel of record on October 20, 1989.

On January 4, 1990, Mr. Justice White signed an order (App. E, p. 1e) extending the time for Petitioner to file a petition for a writ of certiorari in the above-entitled case to and including February 5, 1990.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the United States, Amendment VII (App. M, p. 1m).

STATUTORY PROVISIONS INVOLVED

The case is predicated on the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f, inclusively (App. F, pp. 1f-16f), as will more fully appear by reference to the Complaint (App. G, pp. 1g-14g), and the Pretrial Stipulation (App. H, pp. 1h-25h).

Also, involved is: 28 U.S.C. § 1331 (App. I, p. 1i).

The pertinent text of the foregoing are set forth in the respective Appendix, under separate cover.

STATEMENT OF THE CASE

The petitioner, ULRICH HUYSSEN, of German national origin, was born in Meinigen, Germany, to German parents that were/are citizens of Germany; but, however, the Petitioner came to the United States in 1964 and is a resident of the United States with the "Green Card."

On February 11, 1986, the Petitioner commenced this action by filing his Complaint (App. G, pp. 1g-14g) against the Respondent in the United States District Court for the Middle District of Louisiana (Section "A"), alleging that the Respondent had rejected his Application for Credit (App. J, pp. 1j-11j), dated August 29, 1984, by which he sought an extension of credit in the amount of \$30,900.00, at an annual rate of interest of 12.5%, to be secured by a second mortgage on a certain particularly described piece of real estate situated in East Baton Rouge Parish, Louisiana.

The Respondent's rejection of Petitioner's loan application for an extension of credit was pretextually for reasons of insufficient income, based on Respondent's esoterically manipulative maneuvers of Petitioner's income tax information (as appears by reference to the Affidavit of Dr. Jan Warren Duggar (App. K, pp. 1k-6k)), contrary to the pertinent provisions of Respondent's own Lending Policy Manual (App. L, pp. 1L-12L), by treating/figuring depreciations (nontaxable income) as taxable income.

The Respondent's Lending Policy Manual (App. L, pp. 6L-7L), at pp. 36-37, § 300, Topic .002, Subtopic .10, which was issued or revised 11/19/81, provides:

- (3) The lower right hand column (side) is for the calculation of FUMC's debt to income ratio.
 - (a) Enter the borrower's "Total annual taxable income" from volume above.
 - (b) Multiply this income by a factor to produce "net" after tax income. This factor is 70% except in Florida and Tennessee where it is 75%.
 - (c) This computation yields "net annual taxable income."
 - (d) Add to this figure any non-taxable income shown in the column for "non-taxable" income.
 - (e) we now have calculated the borrower's "net annual" income.
 - (f) This annual figure must now be reduced by dividing it by the appropriate number of months for which it is received (which is usually 12).

(g) Now we have our "net" monthly income to which we can apply our debt to income percentage per company policy.

(h) Multiply the "net" monthly income by 55% our debt to income percentage, to determine the amount we would allow in monthly obligations.

After these calculations compare your results to "total monthly obligations" in the left hand column. If your calculation yields the higher number, we have an acceptable debt to income ratio. If your calculation is lower than "total monthly obligations" our borrower(s) lack ability and should be rejected (App. L, p. 7L).

This form (App. K, p. 5k) is to accompany all submissions [Cf. App. K, p. 2k, § 5.] as well as becoming a part of your closed loan package (App. L, p. 7L).

It is established by the record, that at all times applicable to this litigation the Respondent's Baton Rouge Branch Office Manager who initially calculated Petitioner's income-to-debt ratio, in accordance with the formula set forth and painstakingly spelled out in the Respondent's Lending Policy Manual (App. L, pp. 1L-12L) was well trained in, acquainted and familiar with the use and application of the formula and the lending policy of the Respondent; and, therefore, being satisfied that Petitioner had met the criteria of credit-worthiness under the guidelines of Respondent's Lending Policy Manual, forwarded the "submission package" as being acceptable, entitling petitioner, ULRICH HUYSEN, to an extension of credit in the amount of \$30,900.00 under the guidelines of Respondent's Lending Policy Manual (App. L, pp. 6L-7L).

The "submission package" was standard; and Petitioner's monthly income calculated to be higher than his debt, or total monthly obligations, or at an income-to-debt ratio which justi-

fied him to an extension of credit in the amount of \$30,900.00 by the respondent, FIRST UNION HOME EQUITY CORPORATION.

The Respondent was able to determine Petitioner's national origin (German) and Christian religious denominational affiliation (a Gospel Minister of the Interdenominational World Mission for Jesus) by reviewing his Application for Credit (App. J, pp. 3j and 5j); and, therefore, can not be allowed to contend that it lacked such knowledge at the time of its rejection of Petitioner's application for extension of credit.

The Respondent, through its then present and past Baton Rouge Office Branch Managers, was requested under Deposition Subpoenae (App. N, pp. 1n-15n) to produce its relevant Loan Register; but refused to do so on pretense that no such register was kept or maintained by the Respondent; but, however, trial evidence established that the Respondent did keep and maintain the information Petitioner sought to discover via the Deposition Subpoenae in the individual loan applicants' personal files, filed by the Respondent, in accordance with its "standard office procedures" (SOP), in its file cabinets.

It was clearly envisaged that if the Court had submitted the case for jury determination, it is a logical assumption that the jury would have drawn the inference, based on the documentary and creditable testimonial evidence adduced on the trial, that but for the respondent's unlawfully prohibitory acts of discrimination against Petitioner because of his national origin and/or religion denominational affiliation, or for other proscriptive acts within the ambit of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (App. F, pp. 1f-16f), the Respondent would not have rejected Petitioner's loan application for an extension of credit in the amount of \$30,900.00, and would have calculated his income-to-debt ratio consistently with the

formula of its Lending Policy Manual (App. L, pp. 6L-7L); and that the Respondent's articulation, that the rejection was for insufficient income, was a pretext for discriminatory credit practices, or unfair credit practices, proscribed by ECOA.

REASONS FOR GRANTING THE WRIT

The material difference in the outcome of Respondent's calculation of Petitioner's income-to-debt ratio and that of the Petitioner's called expert, Dr. Jan Warren Duggar, is that Dr. Duggar, under the formula and guidelines of the Respondent's Lending Policy Manual, considered and treated depreciations as non-taxable; and that the Respondent disregarded the formula and guidelines of its own Lending Policy Manual and considered and treated depreciations as taxable income in its calculation of Petitioner's income-to-debt ratio; and, thereby, the Respondent, without just cause, and pretextually, deviated from the criteria of its own Lending Policy Manual and intentionally, arbitrarily, and capriciously rejected Petitioner's loan application for the extension of credit in the amount of \$30,900.00.

A. The natural inference is that the Respondent rejected the Petitioner's loan application — for an extension of credit in the amount of \$30,900.00 — because of his national origin (German) and his religious affiliation (a Gospel Minister of the Interdenominational World Mission for Jesus), or otherwise, engaged in unlawful credit discrimination against him in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f; and that the Respondent's assertion for the rejection of his loan application is a pretext; in that it is shown

that the Respondent intentionally disregarded the guidelines of its own Lending Policy Manual (App. L, pp. 6L-7L) to come up with a calculation of income-to-debt ratio apparently designed to camouflage its intentionally discriminatory acts against petitioner, ULRICH HUYSEN, based on his national origin and religion, in violation of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (App. F, pp. 1f-16f).

B. After Petitioner had made out a *prima facie* case upon factual evidence from which a natural inference could be drawn that Respondent had rejected Petitioner's loan application and had denied him extension of credit without just cause, or because of his national origin or religion, in violation of ECOA, it was prejudicial error for the Trial Court to decline jury-determination of the case.

C. Petitioner's motion for new trial focusing on misleading ambiguity employed by Respondent in its Lending Policy Manual (App. L, pp. 6L-7L) should have been granted by the Trial Court for reasons that such ambiguity should have been construed against the Respondent.

**I. THE NATURAL INFERENCE IS THAT
PETITIONER'S CREDIT APPLICATION WAS
REJECTED IN VIOLATION OF ECOA,
15 U.S.C. §§ 1691-1691f.**

The natural inference to be drawn from Respondent's manipulative maneuvers in its employment of the Income Tax information provided by Petitioner in his "submission package" required by Respondent for the purposes of its scrutinization to determine his financial sufficiency to service a second mortgage loan in the amount of \$30,900.00, in accor-

dance with its standing lending policy criteria, devoid of any esoteric application of the Income Tax information in making the determination of his financial capability, is that Respondent discriminated against Petitioner because of his national origin (German), or because of his religion (a Gospel Minister of the Interdenominational World Mission for Jesus), in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f (App. F, pp. 1f-16f).

The Respondent's articulated reason that it rejected Petitioner's loan application because of "insufficient income" is a pretext to camouflage Respondent's deviation from the prescribed formula and guidelines of its own Lending Policy Manual to intentionally calculate Petitioner's income-to-debt ratio, by applying his Income Tax information in a manner to produce a negative effect and discrimination against Petitioner, because of his national origin, or religion in violation of ECOA.

Although starting point in any case involving statutory construction must be language employed by Congress, relevant legislative history of a particular statute may be examined in order to ensure that its literal application fulfills congressional intent. *Fischl v. General Motors Acceptance Corp.*, 708 F.2d 143 (1983).

As was said by the Court of Appeals, via analogy, that:

Intent can usually only be inferred from circumstantial evidence. Today, employers, and their supervisors, who might choose to discriminate on the basis of race have become, as a result of twenty years of Title VII litigation, too sophisticated to use racial epithets or to leave glaring tracks if an employee is being discharged for race-related reasons. Instead, the motive is veiled behind apparently neutral

remarks about business necessity, an employee's inadequate performance, attitude and the like. *Barnes v. Yellow Freight Systems, Inc.*, 778 F.2d 1096, at 1101 (5th Cir. 1985).

To add potency to the question: Whether the Respondent deviated from the formula and guidelines of its Lending Policy Manual, in its calculation of Petitioner's income-to-debt by applying Income Tax information from Petitioner's loan application "submission package" in a manner to intentionally yield a negative result and establish the Respondent's articulated reason to discriminate against Petitioner in violation of ECOA? Therefore, via analogy, we now turn to the case of *United States v. American Future Systems, Inc.*, 571 F.Supp. 551 (D.C. Penn. 1983), where the court said:

Preponderance of evidence standard is applicable in assessing whether special credit purpose programs are either established or administered with the purpose of evading the requirements of Equal Credit Opportunity Act or regulation B or whether in the absence of purposeful discrimination, equitable relief is necessary to enforce the requirements imposed by law. Truth in Lending Act §§ 704, 706, as amended, 15 U.S.C.A. §§ 1691c, 1691e.

The Respondent should not be allowed to deviate from its standing guidelines of its Lending Policy Manual and choose esoteric methods, at its discretion, of doing things that are facially discriminatory and in violation of Appellant's protected rights under ECOA. The lending provision section of Respondent's Lending Policy Manual, should be interpreted in a manner that effectuates a central purpose that would eliminate discretionary applications allowing "at will" unlawful discrimination in credit practices in violation of ECOA.

No showing of any specific intent to discriminate or statistical showing of adverse impact on protected class is necessary to establish prima facie case of violation under 15 U.S.C. §1691e. *Miller v. American Exp. Co.*, 688 F.2d 1235 (C.A. Ariz. 1982).

ECOA being a "discrimination" statute, its most imaginative use may be in that area. Courts are free to look at the effects of a creditor's practice, as well as the creditor's motive or conduct in individual transactions. *Griggs v. Duke Power Co.*, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971).

II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN THAT IT REFUSED TO SUBMIT THE CASE FOR JURY DETERMINATION.

At the close of evidence of Petitioner's case-in-chief; and Petitioner rested, the Respondent orally moved the Court "to direct a verdict in favor of First Union"; but, however, the Court deferred ruling, for oral reasons dictated into the record (App. B, pp. 1b-2b).

At the close of all evidence, and both parties had rested, the Petitioner, then, orally moved the Court for a directed verdict, which was denied, for oral reasons dictated into the record (App. B, pp. 1b-2b). The Respondent, then, again, orally moved for a directed verdict, which was granted, for oral reasons dictated into the record (App. B, pp. 1b-2b). Consequently, the Court dismissed Petitioner's case with prejudice (App. C, p. 1c), without giving the jury the opportunity to decide the pertinent factual issues:

1. Whether from the evidence adduced an inference

could be drawn that Petitioner had satisfactorily met all of the criteria of credit-worthiness under the guidelines of the Lending Policy Manual of Respondent; and that Respondent deviated from its prescribed formula and standing guidelines to consider and treat Income Tax depreciations as taxable income and not as non-taxable income in its calculation of Petitioner's income-to-debt ratio to camouflage its unlawfully discriminatory practices against Petitioner, because of his religion, or national origin, in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f?

2. The Petitioner's entitlement to damages under equitable relief.

In an action brought under ECOA in which the plaintiff alleged she was illegally denied credit on the basis of her husband's unfavorable credit rating. The Court held:

A jury trial is required in an action brought under the Equal Credit Opportunity Act. *Vander Missen v. Kellogg-Citizens Nat. Bk., Etc.*, 83 F.R.D. 206 (E.D. Wis. 1979).

The Equal Credit Opportunity Act, in purposes, is not unlike the fair housing provisions of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631, where it was said:

Action for damages under the fair housing provisions of Civil Rights Act of 1968 was an action to enforce "legal rights" within meaning of Seventh Amendment decisions and either party on demand was entitled to jury trials. *Curtis v. Leother*, 415 U.S. 189, 94 S.Ct. 1005, L.Ed.2d 260 (1974).

The Trial Court erred in declining the jury trial by not submitting the case to the jury for determination in that it was satisfactorily shown that Petitioner had established a

prima facie case by showing he had met all objective requirements for extension of credit to the Respondent under the criteria of its Lending Policy Manual (App. L, pp. 1L-12L); and from which the inference that the Respondent had discriminated against the Petitioner in violation of the Equal Credit Opportunity Act could have been drawn; or that the jury could have returned a verdict for wrongful action and awarded damages against the Respondent.

It is submitted that an action under ECOA for damages may be an action to enforce "legal rights" within the meaning of Seventh Amendment (App. M, p. 1m) decisions. Cf. *Ross v. Bernard*, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 729 (1970).

III. UNEXPLAINED AMBIGUITY IN RESPONDENT'S LENDING POLICY MANUAL IS ITS RESPONSIBILITY; AND IS BASIS OF PETITIONER'S NEW TRIAL MOTION.

The Petitioner, as a loan applicant, is at a loss to this date to know which allowable Federal Income Tax schedules depreciations are treated as non-taxable income in its calculation of income-to-debt ratio under Section 300, Paragraph (3)(d), page 37 of its Lending Policy Manual (App. L, p. 7L), which provides for "depreciations" to be added back into the income-to-debt calculation formula as income to the Petitioner, as a loan applicant, which effectively reflects an enhancement in available income to service the debt. The only explanation the Respondent makes is that Respondent treats all of its customers, or loan applicants, the same, which was an explanation the Respondent never made prior to trial.

At trial, the Respondent revealed that it was nationwide and its lending policy practices, except for state laws peculiarities, were the same nationwide, which aroused Petitioner's curiosity to ascertain the veracity of that revelation by making an inquiry (App. O, p. 50) under the pseudonymity, Steve Starr, on the Respondent's Northwest Office Center in Oklahoma City, Oklahoma, who responded (App. O, p. 70), advising that depreciations are considered available for debt service, or is added to the calculation as non-taxable income. Based on that newly discovered evidence explaining the complained of ambiguity of Respondent's Lending Policy Manual, Petitioner filed "Motion for New Trial" (App. O, pp. 10-160).

It appears that the following case law with regards to ambiguous language in a written instrument or document is, thusly:

Fact of preparation of written instrument carries with it burden of responsibility for use of the words and phrases in the printed portion of the instrument.
Eastmount Const. Co. v. Transport Mfg. & Equipment Co., 301 F.2d 41.

Natural inference is that the user of ambiguous language employed by the other party, such ambiguity should be construed against the party using the words. *Alcoa S.S. Co. v. U.S.N.Y.*, 338 U.S. 421, 94 L.Ed. 225.

Natural inference is that the user of ambiguous language would make plain what is in his favor. *Gulf Refining Co. v. Home Indemnity Co. of New York*, 78 F.2d 842.

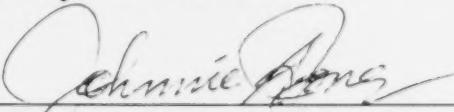
It is submitted that Paragraph (3)(d), § 300, p. 37 of the Respondent's Lending Policy Manual (App. L, p. 7L), should be restricted, limited, and be strictly construed in favor of Petitioner since he is a nonpreparatory user.

CONCLUSION

The Equal Credit Opportunity Act (ECOA) being a "discrimination" statute it should not be minimized; but should be given the **most imaginative use** in that area, especially if a creditor like the Respondent takes advantage of the "effects test" to reach the more subtle, yet more pervasive kinds of discrimination. According to the "effects test" doctrine, in determining the existence of discrimination, courts are free to look at the effects of a creditor's practice, as well as the creditor's motive or conduct in individual transactions. *Griggs v. Duke Power Company*, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971).

On the submissions hereof, the petitioner, ULRICH HUYSEN, prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals, Fifth Circuit.

Respectfully submitted,
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Dated: February 1, 1990

CERTIFICATE OF SERVICE

Undersigned counsel of record for the petitioner, Ulrich Huyssen, does hereby certify that two (2) copies of the above and foregoing

PETITION FOR WRIT OF CERTIORARI,
by hand delivery or by regular United States Mail, first-class postage prepaid, are being forwarded to the opposing counsel of record, whose name and address are as follows:

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Baton Rouge, Louisiana, this 1st day of February, 1990.

89-1259

No. _____

FEB 5

JOSEPH F. SPANIOL, JR.
CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1989

ULRICH HUYSSEN,
Petitioner,

versus

FIRST UNION HOME EQUITY CORPORATION
(formerly, First Union Mortgage Corporation),
Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

APPENDIXES

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APPENDIX 'A'

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

NO. 89-3232
SUMMARY CALENDAR

ULRICH HUYSSEN,
Plaintiff-appellant,
versus

FIRST UNION MORTGAGE CORPORATION,
Defendant-appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
(86-77A) (October 18, 1989)

Before REAVLEY, KING AND JOHNSON CIRCUIT
JUDGES.

PER CURIAM.*

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Plaintiff Ulrich Huyssen appeals the district court's directed verdict in favor of First Union Mortgage Corporation and the denial of Huyssen's motion for a new trial. For the reasons cited herein, we affirm.

I. FACTS AND PROCEDURAL HISTORY

Ulrich Huyssen (Huyssen), a self-employed businessman, applied for a loan in the amount of \$30,900.00 from a Baton Rouge, Louisiana branch office of First Union Mortgage Company (First Union) in late August, 1984. Huyssen's application was denied because his income to debt ratio, as calculated by First Union's North Carolina home office, did not meet applicable guidelines for extending credit. At the time of Huyssen's loan application, First Union's policy when calculating a self-employed loan applicant's income to debt ratio was to treat depreciation as taxable income. Nevertheless, Huyssen, contended that the real reason he was denied credit was because he is German and a Christian minister. Thereafter, Huyssen filed the instant Equal Credit Opportunity Act (ECOA) claim against First Union seeking \$1.5 million in actual damages. At the ensuing trial after both sides had rested, Huyssen and First Union each moved for a directed verdict. The district court granted First Union's motion and dismissed Huyssen's suit.

Some time after trial in 1988, Huyssen, using an alias, pretended to apply for a loan at a First Union branch office in Oklahoma. The branch manager advised Huyssen that depreciation would be treated as non-taxable income in connection with Huyssen's purported loan application. Thereafter, Huyssen moved the district court for a new trial on the basis of this "newly discovered" evidence. The district court,

after considering affidavits from First Union, determined that First Union's policy with regard to the treatment of depreciation as taxable versus non-taxable income had indeed changed in 1987. Since that policy change was made well after Huyssen's 1984 application, however, the district court denied Huyssen's motion on the ground that the "newly discovered" evidence would not have been impeaching or material to the outcome of the case. Huyssen thereafter filed this timely appeal.

II. DISCUSSION

The ECOA, 15 U.S.C. § 1691 *et seq.*, prohibits discrimination on the basis of sex, marital status, age, race, color, religion, national origin, receipt of public assistance benefits, and the exercise of rights under the Consumer Credit Protection Act. A plaintiff may establish unlawful discrimination under the ECOA under either the disparate impact theory or the disparate treatment theory. *See Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) and *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). On the facts presented by this record, it appears that Huyssen sought to recover under a disparate treatment theory rather than a disparate impact theory. In either event, Huyssen has not established a viable claim.

Assuming arguably that Huyssen did, in fact, establish a *prima facie* case of discrimination against First Union, he has consistently failed to come forth with any evidence other than mere conjecture that First Union's stated reason for denying him credit was pretextual. On appeal, Huyssen continues to argue that the "natural inference" to be drawn is that First Union discriminated against him because he is German and a

Christian minister. Remarkably, however, Huyssen does not contend that his application was treated differently than any other self-employed loan applicant. At best, the most we are able to discern from this record are Huyssen's unsupported allegations of discrimination, and as First Union points out, assertions are no substitute for evidence. Accordingly, because there was no question of fact to be determined by the jury, we are unable to find error in the district court's directed verdict in favor of First Union. *See Fed. R. Civ. P. 50(a).*

Huyssen also argues that the district court improperly denied Huyssen's motion for a new trial. A district court is granted broad discretion in ruling on a motion for a new trial, and this Court will reverse only where there has been a clear abuse of discretion. On the facts presented by this record, we are unable to conclude that the district court abused its discretion in denying Huyssen's motion for a new trial.

III. CONCLUSION

Concluding that Huyssen's claim that he was unlawfully denied credit because he is German and Christian is unsupported by the evidence, we affirm the district court's directed verdict in favor of First Union. Further, because we find no abuse of discretion in the district court's denial of Huyssen's motion for a new trial, we do not disturb that ruling. The judgment of the district court is affirmed.

AFFIRMED

APPENDIX 'B'**REASONS FOR JUDGMENT
BY THE DISTRICT COURT**

(As dictated into the record at pp. 248-249 of the Trial Transcript.)

THE COURT: Okay. I understand your position. Don't argue your jury argument to me, I'm just interested in the bare facts. All right. We'll take a recess; take a look at the jury charges, and I'll — we'll probably visit on the jury charges here, informally, if I do not grant the motion.

(Reporter's Note: At 5:37 P.M., a recess was taken; at 5:45 P.M., court reconvened, out of the presence of the jury.)

THE COURT: All right. Counsel, I have thought about the motion for directed verdict, as I have done ever since plaintiff rested, and have carefully reviewed, in my mind, all of the evidence which has been presented to the court. And I conclude that there is no evidence upon which a reasonable jury could conclude that plaintiff has established that, in the processing of this loan, that the defendant discriminated against him by reason of his being a German national, or by reason of his religious affiliation, and that, if this jury should come in with a verdict in favor of the plaintiff, it would be my duty to set it aside. Under those circumstances, I grant the motion for a directed verdict on behalf of the defendant, and will take the case away from the jury. There is no probative evidence in this case of intentional discrimination on the part of this defen-

dant in the processing of this loan. The only thing the plaintiff has proved is that his loan was denied. The explanation offered by the defendant has been totally unrebutted, unchallenged, other than the calculation attempted by Dr. Duggar, whose testimony is not of great benefit to the jury. Because, as I commented a while ago, this is the defendant's money that it's dealing with, and it can lay down whatever rules and regulations, standards, requirements, that it wants when it lends its money, provided it does not apply those standards unequally and discriminate in the application of those standards, in the words of the statute, on the basis of race, color, religion, national origin, sex, or marital status, or age. I find no positive evidence, in this record, of any sort, that the defendant has so discriminated. The motion is hereby granted. Get the jury, Jim; we're going home.

(Reporter's Note: The jury was returned to the courtroom at 5:47 P.M., and the proceedings continued.)

THE COURT: All right. Members of the jury, I'm going to discharge you, at this time, and send you home.

APPENDIX 'C'

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ULRICH HUYSSEN,

VERSUS

FIRST UNION MORTGAGE
CORPORATION

CIVIL ACTION NO. 86-77-A

JUDGMENT

This cause came on before the court for trial, the Honorable John V. Parker, Chief Judge, presiding, and the court having granted defendant's oral motion for directed verdict,

IT IS ORDERED ADJUDGE AND DECREED that there be judgment entered herein in favor of defendant, First Union Mortgage Corporation, and against plaintiff, Ulrich Huyssen, dismissing plaintiff's suit at plaintiff's costs.

Baton Rouge, Louisiana, December 19, 1988.

s/JOHN V. PARKER
John V. Parker, Chief Judge
Middle District of Louisiana



APPENDIX 'D'

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA

ULRICH HUYSSEN
VERSUS
FIRST UNION MORTGAGE CORPORATION

CIVIL ACTION NO. 86-77-A

RULING ON MOTION FOR NEW TRIAL

This matter is before the court on motion by plaintiff for new trial. Defendant opposes the motion. There is no need for oral argument.

The thrust of plaintiff's motion for new trial is that he has newly discovered evidence which contradicts Ralph Richardson's testimony that rental depreciation was treated as taxable income in calculating plaintiff's income-to-debt ratio in accordance with defendant's policy. It seems that after the trial plaintiff contacted a branch manager of one of defendant's offices in Oklahoma, using the "pseudonym" of Steve Starr and pretending to apply for a loan. The branch manager indicated that rental depreciation would be treated as non-taxable in connection with his proposed application for credit.

In determining whether a new trial should be granted on the basis of newly discovered evidence, the court must consider whether the new facts (1) would probably change the outcome; (2) could have been discovered earlier with due diligence; and (3) are merely cumulative or impeaching. **Johnston v. Lucas**, 786 F.2d 1254 (5th Cir. 1986). Clearly,

plaintiff's motion must fall on all grounds. Moreover, the affidavits submitted by defendant in opposition to the motion show that defendant's policy regarding the treatment of depreciation changed in 1987, well past plaintiff's application in 1984, which formed the basis for his ECOA action against defendant. Therefore, this "new evidence" would not be impeaching or material as to the outcome of the case.

In his motion, plaintiff claims that the court's action in directing a verdict was contrary to the law and evidence. Plaintiff has failed to brief this issue and it does not appear that plaintiff has any grounds to support this broad contention. It suffices to say that plaintiff failed to present any evidence (direct or circumstantial) to show that his national origin or religion had any impact on defendant's decision to deny him credit, an essential element of his case. There is no need for oral argument.

Accordingly, plaintiff's motion for new trial is hereby DENIED.

Baton Rouge, Louisiana, February 21, 1989.

s/JOHN V. PARKER
John V. Parker, Chief Judge
Middle District of Louisiana

APPENDIX 'E'

Supreme Court of the United States

NO. A-495

ULRICH HUYSSEN,
Petitioner,

v.

FIRST UNION MORTGAGE CORPORATION

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including February 5, 1990.

s/BYRON R. WHITE
Byron R. White
Associate Justice of the Supreme Court
of the United States

Dated this 4th day of January, 1990.



APPENDIX 'F'**15 § 1691 CONSUMER CREDIT
SUBCHAPTER IV - EQUAL CREDIT OPPORTUNITY****§ 1691.****SCOPE OF PROHIBITION***Activities constituting discrimination*

- (a) It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—
 - (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);
 - (2) because all or part of the applicant's income derives from any public assistance program; or
 - (3) because the applicant has in good faith exercised any right under this chapter.

Activities not constituting discrimination

- (b) It shall not constitute discrimination for purposes of this subchapter for a creditor—
 - (1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness;

- (2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the Board;
- (3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Board, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or
- (4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

Additional activities not constituting discrimination

- (c) It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—
 - (1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;
 - (2) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or
 - (3) any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Board; if such refusal is required by or made pursuant to such program.

Reason for adverse action; procedure applicable; definition

(d)(1) Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

- (A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or
- (B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection

may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

- (5) The requirements of paragraph (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than one hundred and fifty applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.
- (6) For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

(Pub.L. 90-321, Title VII, § 701, as added Pub.L 93-495, Title V § 503, Oct. 28, 1974, 88 Stat. 1521, and amended Pub.L. 94-239 § 2, Mar. 23, 1976, 90 Stat. 251).

§ 1691a.
DEFINITIONS; RULES OF
CONSTRUCTION

- (1) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.
- (b) The term "applicant" means any person who applies to a creditor directly for an extension, renewal, or con-

tinuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

- (c) The term "Board" refers to the Board of Governors of the Federal Reserve System.
- (d) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.
- (e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.
- (f) The term "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.
- (g) Any reference to any requirement imposed under this subchapter or any provision thereof includes reference to the regulations of the Board under this subchapter or the provision thereof in question.

(Pub.L. 90-321, Title VII, § 702, as added Pub.L. 93-495, Title V, § 503, Oct. 28, 1974, 88 Stat. 1522.)

§ 1691b.

PROMULGATION OF REGULATIONS
BY BOARD; ESTABLISHMENT OF
CONSUMER ADVISORY COUNCIL BY
BOARD; DUTIES, MEMBERSHIP,
ETC., OF COUNCIL

- (a) The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this subchapter any class of transactions not primarily for personal, family, or household purposes, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this subchapter. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act, but in no event later than the effective date of this Act.
- (b) The Board shall establish a Consumer Advisory Council to advise and consult with it in the exercise of its functions under this chapter and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interests of creditors and consumers. The Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding \$100 per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

(Pub.L. 90-321, Title VII, § 703, as added Pub.L. 93-495, Title V, § 503, Oct. 28, 1974, 88 Stat. 1522, and amended Pub.L. 94-239, § 3(a), Mar. 23, 1976, 90 Stat. 252.)

§ 1691c.

ADMINISTRATIVE ENFORCEMENT

Enforcing agencies

- (a) Compliance with the requirements imposed under this subchapter shall be enforced under:
 - (1) Section 8 of the Federal Deposit Insurance Act, in the case of—
 - (A) national banks, by the Comptroller of the Currency,
 - (B) member banks of the Federal Reserve System (other than national banks), by the Board,
 - (C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.
 - (2) Section 5(d) of the Home Owners' Loan Act of 1933, section 407 of National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.
 - (3) The Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.
 - (4) Subtitle IV of Title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle.
 - (5) The Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

- (6) The Packers and Stockyards Act, 1921 (except as provided in Section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.
- (7) The Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, and production credit association;
- (8) The Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to brokers and dealers; and
- (9) The Small Business Investment Act of 1958, by the Small Business Administration, with respect to small business investment companies.

*Violations of subchapter deemed violations
of preexisting statutory requirements; additional
agency powers*

- (b) For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law. The exercise of the authorities of any of the agencies referred to in subsection (a) of this section for the purpose of enforcing compliance with any requirement imposed under this subchapter shall in no way preclude the exercise of such

authorities for the purpose of enforcing compliance with any other provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

Overall enforcement authority of Federal Trade Commission

(c) Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce any Federal Reserve Board regulation promulgated under this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

Rules and regulations by enforcing agencies

(d) The authority of the Board to issue regulations under this subchapter does not impair the authority of any

other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this subchapter.

(As amended Pub.L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466; Pub.L. 98-443 § 9(n), Oct. 4, 1984, 98 Stat. 1708.)

§ 1691d.

APPLICABILITY OF OTHER LAWS

Requests for signature of husband and wife for creation of valid lien, etc.

(a) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this subchapter: *Provided, however,* That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

State property laws affecting creditworthiness

(b) Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this subchapter.

State laws prohibiting separate extension of consumer credit to husband and wife

(c) Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the

same creditor: *Provided*, That in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

Combining credit accounts of husband and wife with same creditor to determine permissible finance charges or loan ceilings under Federal or State laws

- (d) When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

Election of remedies under subchapter or State law; nature of relief determining applicability

- (e) Where the same act or omission constitutes a violation of this subchapter and of applicable State law, a person aggrieved by such conduct may bring a legal action to recover monetary damages either under this subchapter or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

Compliance with inconsistent State laws; determination of consistency

- (f) This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the incon-

sistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this subchapter if the Board determines that such law gives greater protection to the applicant.

Exemption by regulation of credit transactions covered by State law; failure to comply with State law

(g) The Board shall by regulation exempt from the requirements of section 1691 and 1691a of this title any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this subchapter or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this subchapter for the purposes of section 1691e of this title.

(Pub.L. 90-321, Title VII, § 705, as added Pub.L. 93-495, Title V, § 503, Oct. 28, 1974, 88 Stat. 1523, and amended Pub.L. 94-239, § 5, Mar. 23, 1976, 90 Stat. 253.)

§ 1691e.
CIVIL LIABILITY

Individual or class action for actual damages

(a) Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

Recovery of punitive damages in individual and class actions for actual damages; exemptions; maximum amount of punitive damages in individual actions; limitation on total recovery in class actions; factors determining amount of award

- (b) Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for punitive damages in an amount not greater than \$10,000, in addition to any actual damages provided in subsection (a) of this section, except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of \$500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

Action for equitable and declaratory relief

- (c) Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this subchapter.

Recovery of costs and attorney fees

- (d) In the case of any successful, action under subsection (a), (b), or (c) of this section, the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

Good faith compliance with rule, regulation, or interpretation of Board or Interpretation or approval by an official or employee of Federal Reserve System duly authorized by Board

(e) No provision of this subchapter imposing liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Jurisdiction of courts; time for maintenance of action; exceptions

(f) Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than two years from the date of the occurrence of the violation, except that—

- (1) whenever any agency having responsibility for administrative enforcement under section 1691c of this title commences an enforcement proceeding within two years from the date of the occurrence of the violation,
- (2) whenever the Attorney General commences a civil action under this section within two years from the date of the occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

Request by responsible enforcement agency to Attorney General for civil action

- (g) The agencies having responsibility for administrative enforcement under section 1691c of this title, if unable to obtain compliance with section 1691 of this title, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted.

Authority for Attorney General to bring civil action; jurisdiction

- (h) When a matter is referred to the Attorney General pursuant to subsection (g) of this section, or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this subchapter, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

Recovery under both subchapter and fair housing enforcement provisions prohibited for violation based on same transaction

- (i) No person aggrieved by a violation of this subchapter and by a violation of section 3605 of Title 42 shall recover under this subchapter and section 3612 of Title 42, if such violation is based on the same transaction.

Discovery of creditor's granting standards

(j) Nothing in this subchapter shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.

(Pub.L. 90-321, Title VII, § 706, as added Pub.L. 93-495, Title V, § 503, Oct. 28, 1974, 88 Stat. 1524, and amended Pub.L. 94-239, § 6, Mar. 23, 1976, 90 Stat. 253.)

§ 1691f.

ANNUAL REPORTS TO CONGRESS; CONTENTS

Each year, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this subchapter, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements of this subchapter is being achieved, and a summary of the enforcement actions taken by each of the agencies assigned administrative enforcement responsibilities under section 1691e of this title.

APPENDIX 'G'

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

ULRICH HUYSSEN,
Plaintiff
versus
FIRST UNION MORTGAGE CORPORATION,
Defendant

CIVIL ACTION NO. 86-77
SECTION 'A'

COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiff institutes this action with a request for a trial by jury for civil liability under the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691 et seq., seeking actual damages, punitive damages, attorneys' fees, costs of this action and such other further relief as the Court may deem proper, due to the Defendant's violations of ECOA by having denied Plaintiff's application for the extension of credit for a \$30,900.00, 10-year Second Mortgage Real Estate Loan on the basis of Plaintiff's national origin [German] and religion [a Gospel Minister of the Interdenominational Mission Association].

II. JURISDICTION

2. Jurisdiction of the Court is invoked under Title 15, United States Code, Section 1691e(f).

III. PLAINTIFF

3. The plaintiff, ULRICH HUYSSEN, is a resident of the full age of majority and legal competence of the Parish of East Baton Rouge, State of Louisiana, residing at 6115 Summer Lake Drive, Baton Rouge, Louisiana 70817.

4. The plaintiff, ULRICH HUYSSEN, was born in Meiningen, Germany; but came to the United States on May 22, 1964, visiting, and got [was issued] an "Immigration Visa" on January 27, 1965, and thereby became a permanent resident of the United States, with the "Green Card."

5. Since December of 1976, Plaintiff has maintained his domicile and permanent place of residence in the Parish of East Baton Rouge, State of Louisiana, United States of America.

6. Plaintiff, ULRICH HUYSSEN, is a believer and follower of the Christian religion; and is a "Gospel Minister" of the Interdenominational Mission Association.

7. At all times applicable to this action, Plaintiff was lawfully married to (or rather was the husband of) Gisela P. Huyssen (born Propp), who resides with him at their home and permanent place of residence: 6115 Summer Lake Drive, Baton Rouge, Louisiana 70817, and who appears in the hereinafter referenced application for extension of credit only to free collateral or inchoate interest, not as co-signer for credit-worthy loan applicant.

8. For the purposes of this action, the plaintiff, ULRICH HUYSEN, is an "Applicant" by definition under the provisions of 15 U.S.C. § 1691a(b).

IV. DEFENDANT

9. The defendant, FIRST UNION MORTGAGE CORPORATION, is a business corporation, domiciled at Union Plaza Cont-1, Charlotte, North Carolina 28288, engaged in the business of lending money and/or extending credit, authorized to do [and at all times applicable to this action is doing] business in the Parish of East Baton Rouge, State of Louisiana, through its "Branch Office" at 3636 South Sherwood Forest Boulevard, Suite 690, Baton Rouge, Louisiana 70816; and, therefore, is subject to the jurisdiction and venue of this Court.

10. The defendant, FIRST UNION MORTGAGE CORPORATION, may be served with process through:

Prentice-Hall Corporation System
1006 Hibernia Bank Building
New Orleans, Louisiana 70112,

its legally designated agent for service of process.

11. At all times relevant hereto, the defendant, FIRST UNION MORTGAGE CORPORATION, in the ordinary course of its business, regularly extended, offered to extend, arranged or offered to arrange the extension of credit to its customers for which a finance charge is or may be imposed. Therefore, for the purposes of this action, the defendant, FIRST UNION MORTGAGE CORPORATION, is a "creditor" by definition under the provisions of 15 U.S.C. § 1691a(e).

V. FACTUAL STATEMENT

12. Plaintiff, ULRICH HUYSSEN, after seeing and reading several advertisements in the daily local newspapers by which the defendant, FIRST UNION MORTGAGE CORPORATION, advertised, under *Classified Ads*, to extend credit at 12.5% APR SECOND MORTGAGES, the plaintiff, ULRICH HUYSSEN, responding to the Defendant's advertisements for customers appearing in the daily local newspapers, on August 29, 1984, made an application to the defendant, FIRST UNION MORTGAGE CORPORATION, through its Branch Office, for an extension of credit aggregating Thirty Thousand Nine Hundred and No/100 Dollars (\$30,900.00), to be secured by certain real estate as collateral, all as will more fully appear by reference to [Complaint EXHIBIT — A], which is hereto annexed and by reference thereto is made a part hereof the same as if herein set forth at length.

13. By written communication, the defendant, FIRST UNION MORTGAGE CORPORATION, purporting to be acting in compliance and/or in accordance with the requirements of Federal law, notified the plaintiff, ULRICH HUYSSEN, that his application for extension of credit had been denied, all as will more fully appear by reference to [Complaint EXHIBIT — B] and [Complaint EXHIBIT — C], which are hereto annexed and by reference thereto are made a part hereof the same as if herein set forth at length.

14. Plaintiff, ULRICH HUYSSEN, avers, and in due course will show, that the reasons provided by the defendant, FIRST UNION MORTGAGE CORPORATION, for the denial and/or rejection of Plaintiff's application to the Defendant for an extension of credit are pretexts for the Defendant's

unlawful, willful and intentional discrimination against Plaintiff, with respect to the credit transaction, on the basis of religion and national origin, in violation of 15 U.S.C. § 1691(a)(1), the Plaintiff, at all times relevant hereto, being not devoid the capacity to contract.

VI. STATEMENT OF CLAIM

15. Defendant, FIRST UNION MORTGAGE CORPORATION, has unlawfully discriminated against plaintiff, ULRICH HUYSSEN, with respect to the aforementioned credit transaction, on basis of religion and national origin, in violation of 15 U.S.C. § 1691(a)(1).

16. Defendant, FIRST UNION MORTGAGE CORPORATION, is liable to plaintiff, ULPICH HUYSSEN, for actual damages in the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00), plus legal interest thereon from date of judicial demand until paid.

17. In addition to actual damages, the defendant, FIRST UNION CREDIT MORTGAGE CORPORATION, is liable to the plaintiff, ULRICH HUYSSEN, for punitive damages in the amount of Ten Thousand and No/100 Dollars (\$10,000.00), plus legal interest thereon from date of judicial demand until paid, all in accordance with the provisions of 15 U.S.C. § 1691(e)(b).

18. Defendant, FIRST UNION MORTGAGE CORPORATION, is liable to the plaintiff, ULRICH HUYSSEN, for the costs and expenses incurred by him in the prosecuting of this action; and for attorneys' fees at the rate of One Hundred Seventy-five Dollars (\$175.00) per hour, or an amount equal to not less than One Third ($\frac{1}{3}$) of the gross amount of the aggre-

gate damages that may be awarded Plaintiff by the Court, whichever is greater, all in accordance with the provisions of 15 U.S.C. § 1691e(d).

VII. DEMAND FOR JURY TRIAL ON ALL ISSUES

19. The plaintiff, ULRICH HUYSSEN, as provided by Rule 38 of the Federal Rules of Civil Procedure for the United States District Courts (28 U.S.C.), requests trial by jury in the above-captioned action.

VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiff, ULRICH HUYSSEN, respectfully prays that this Court:

a) Adjudge and decree that defendant, FIRST UNION MORTGAGE CORPORATION, did, in fact, unlawfully discriminate against plaintiff, ULRICH HUYSSEN, on the basis of religion and/or national origin, with respect to the credit transaction on which this action is predicated, in violation of 15 U.S.C. § 1691(a)(1).

b) Award judgment in favor of plaintiff, ULRICH HUYSSEN, and against the defendant, FIRST UNION MORTGAGE CORPORATION, for actual damages in the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00), plus legal interest thereon from date of judicial demand until paid.

c) Award judgment in favor of plaintiff, ULRICH HUYSSEN, and against the defendant, FIRST UNION MORTGAGE CORPORATION, for punitive damages in the amount of Ten Thousand and No/100 Dollars (\$10,000.00), plus legal interest thereon from date of judicial demand until paid.

d) Award judgment in favor of plaintiff, ULRICH HUYSEN, and against the defendant, FIRST UNION MORTGAGE CORPORATION, for all costs and expenses that incurred by the Plaintiff in the prosecution of this action.

e) Award judgment in favor of plaintiff, ULRICH HUYSEN, and against the defendant, FIRST UNION MORTGAGE CORPORATION, for attorneys' fees at the rate of One Hundred Seventy-five and No/100 Dollars (\$175.00) per hour, or for an amount equal to not less than One Third ($\frac{1}{3}$) of the gross amount of the aggregate damages that may be awarded the Plaintiff by the Court in this action, whichever is greater.

(f) For such other and further relief as the Court deems just, fit and proper.

Attorneys for Plaintiff:

s/JOHNNIE A. JONES
Johnnie A. Jones, Trial Attorney
JONES & JONES
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: (504) 383-8573

DATED: February 11, 1986

FIRST UNION MORTGAGE CORPORATION
LOAN PROCESSING REPORT (2ND) MORTGAGE

APPLICATION DATE: 08/29/84

SUBMISSION DATE: 09/18/84

FROM (BRANCH): Baton Rouge, LA (ACCT. #): 048-018436

NAME: Ulrich Huyssen & wife, Gisela Proppe Huyssen

ADDRESS: 4221 Rue de Valeur, Baker, Louisiana 70714

PROPERTY ADDRESS: 514 Myrtle Street, Baker, Louisiana 70714

MAIL PAYMENT BOOK TO: 4221 Rue de Valeur, Baker, Louisiana 70714

PMT. VIA BANK DRAFT: YES NO

SOURCE (NAME): Baton Rouge Mortgage (CODE): 15

AMT. REQUESTED: \$30,640.00

FEES:

POINTS: - 0 -

MIS.: \$60.00

ATTNY.: \$200.00

INS. PREMIUM - SINGLE JOINT: - 0 -

TOTAL CHECK: \$30,900.00

INTEREST RATE: 12.50% Adjustable

PAYMENTS: 120 @ \$452.30

PAYBACK: \$54,276.00

9g

INS. COVERAGE: - 0 -

PMT. VIA BANK DRAFT: YES NO

Mrs. no S.S. #

Blank Financial Stmt.

GENERAL INFORMATION
(FOR BRANCH'S COMPLETION)

MAKE CHECK PAYABLE TO: Ulrich & Gisela Huyssen &
H. Matthew Chambers, Attorney

CONTINGENCIES

- PENDING CURRENT & SATISFACTORY 1ST MORTG. BALANCE NOT TO EXCEED: \$11,000.00
- PENDING THE FOLLOWING ADDITIONAL DOCUMENTATION: Homeowners to show FUMC as 2nd mortgagee. Both husband and wife to sign Application and pending receiving signed copy of ARM form that was sent to customer in mail.
- MISC.

CREDIT DECISION (GENERAL OFFICE USE ONLY)

APPROVED:

- Valid Pay Debts Indicated Close Credit Lines
- Eliminate Credit Cards Commitment Basis Only
- Other

PENDING:

REJECTED:

- Unacceptable Credit Ratings Excessive Use of Credit

10g

- Income/Debt Ratio Loan/Value Unacceptable
- Value of Property Job Stability Out Of Policy Request Other

Signed (Approved) s R.E. REILAND

R.E. Reiland, Need Title

DATE: 9-20-84

(COMPLAINT EXHIBIT A)

11g

FIRST UNION

October 8, 1984

Mr. & Mrs. Ulrich Huyssen
514 Myrtle Street
Baker, Louisiana 70714

RE: Loan application with First Union Mortgage Corporation

Dear Mr. & Mrs. Huyssen:

We regret to inform you that we cannot place your loan at this time. Federal law requires us to provide certain notices to each applicant that has been denied credit or that have voluntarily withdrawn their application. *Attached you will find a copy of this notice.*

We do appreciate your considering us, and hopefully in the near future we can be of service.

Very truly yours,

FIRST UNION MORTGAGE CORPORATION

BRIAN HOLLENBACK
Brian Hollenback, Manager

BH:tl

Enclosure

(COMPLAINT EXHIBIT B)

FIRST UNION MORTGAGE CORPORATION
OF NORTH CAROLINA

FAIR CREDIT REPORTING AND EQUAL CREDIT
OPPORTUNITY ACTS NOTICE (STATEMENT OF
CREDIT DENIAL, TERMINATION, OR CHANGE)

CREDITOR: FIRST UNION MORTGAGE CORPORATION
OF NORTH CAROLINA (MAILING ADDRESS):
3636 S. Sherwood Forest Blvd., Suite 690 (CITY): Baton
Rouge (STATE): Louisiana 70816

APPLICANT(S): Ulrich & Gisela Huyssen (MAILING
ADDRESS): 514 Myrtle St. (CITY): Baker (STATE): Louisi-
ana 70714

*DESCRIPTION OF ACCOUNT, TRANSACTION, OR
REQUIRED CREDIT:* Second Mortgage secured by real
estate in the amount of \$30,900.00 for 10 years.

DESCRIPTION OF ADVERSE ACTION TAKEN:

- We are unable to grant credit in the amount or on the
terms which you requested.
- We have imposed the following conditions upon the
granting of credit: (Such as requiring a larger downpay-
ment, a shorter maturity, a co-signer, guarantor or addi-
tional collateral) Should you fail to meet the below
conditions **WITHIN FIVE (5) DAYS AFTER THE
BELOW DATE**, our conditional offer will be deemed with-
drawn and your application will be deemed declined.
- Applicant(s) voluntarily withdrew application.

(COMPLAINT EXHIBIT C)

EQUAL CREDIT OPPORTUNITY ACT DISCLOSURE

In accordance with Regulation B (12 CFR 202) Section 202.9 (a) you have the right to require a statement of the reason(s) for the above described adverse action. Such a request must be made within 60 days of the below date and should be made to the person named below. The Regulation requires that we provide you with the reasons within 30 days of the receipt of your request.

FAIR CREDIT REPORTING ACT DISCLOSURES

If checked below, the above "Adverse Action" taken wholly or partly because of:

- Information contained in a Consumer (Credit) Report obtained from the below Consumer Reporting Agency:
(FULL NAME OF CREDIT BUREAU): - (ADDRESS AND TELEPHONE NUMBER): -
(If you contact the above agency, you are entitled to a full disclosure of the nature and substance of all information (except medical) on you in said agency's files, at no cost to you.)
- Information obtained from a third party source other than a Consumer Reporting Agency. You have the right to make a written request of us for disclosure of the nature of this information. *However, to be honored, such written request must be received by us within 60 days from the date you receive this Notice.*

Should you have any additional information which might assist us in evaluating your creditworthiness, please let us know. We thank you for applying and sincerely hope that we may be able to serve you in the future.

EQUAL CREDIT OPPORTUNITY ACT NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Comptroller of the Currency, Consumer Affairs Division, Washington, D.C. 20219.

Notice delivered or mailed on 10/8/84

FIRST UNION MORTGAGE
CORPORATION

s/BRIAN HOLLENBACK
Brian Hollenback, Mgr.
Telephone: 291-5966

(One primary applicant must receive a copy of this NOTICE)

APPENDIX 'H'

IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA

ULRICH HUYSSEN,
Plaintiff,
versus
FIRST UNION MORTGAGE CORPORATION,
Defendant.

CIVIL ACTION NO. 86-077
SECTION 'A'

PRETRIAL STIPULATIONS

A conference of Counsel was held in the above entitled cause on the 22 day of June, 1988.

APPEARANCES: Johnnie A. Jones, Esq.
JONES & JONES
for the Plaintiff

Kelly Wilkinson
and Jose R. Tarajano, Jr.
for the Defendant

I. JURISDICTION:

This Court has subject matter jurisdiction under 15 U.S.C. § 1691e(f), 28 U.S.C. § 1331.

Defendant, FIRST UNION HOME EQUITY CORPORATION (formerly, First Union Mortgage Corporation), admits that it does business within the jurisdiction of this Court.

II. MOTIONS:

Currently, there are no pending motions; and none are anticipated to be filed by either party.

III. PLAINTIFF CLAIMS:

(A) ESSENTIAL ELEMENTS: Under the applicable law the essential elements which Plaintiff must prove in order to prevail are:

1. Plaintiff is a member of a class protected by the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 et seq.
2. Plaintiff is an "applicant" within the definition of 15 U.S.C. § 1691a(b); and a person under 15 U.S.C. § 1691a(f).
3. Defendant is a "creditor" within the definition of 15 U.S.C. 1691a(e).
4. Under the criteria, or Standards of Creditworthiness," spelled out in Defendant's Lending Policy manual, Plaintiff met the criteria of the creditor for the loan Plaintiff sought, on the terms Defendant's required.
5. Defendant rejected Plaintiff's loan application contrary to the criteria, or "Standards of Creditworthiness," as set forth by the Defendant in Defendant's own Lending Policy Manual.
6. Defendant's rejection of Plaintiff's application was based solely on Plaintiff's status as a member of a class protected by ECOA, namely: national origin and/or religion.

7. Defendant's reason for rejection of Plaintiff's loan application and defendant's failure and refusal to extend credit to the Plaintiff was (is) a mere pretext to discriminate against Plaintiff on unlawful grounds.
8. Plaintiff suffered actual and/or punitive damages.
9. Defendant's failure of compliance entitle Plaintiff to recover — in addition to actual damages — punitive damages and attorney's fees.
10. As of August 29, 1984, and for all times applicable to this action, Plaintiff, unequivocally, met "Standards of Creditworthiness" under the Defendant's Lending Policy Manual.

(B) FACTS: The facts which Plaintiff intends to prove upon the trial are:

1. The national origin of Plaintiff is German.
2. Plaintiff is a permanent resident of the United States — with the "Green Card."
3. Plaintiff is of the Christian Religious Faith, and a "Gospel Minister" of the Interdenominational Mission Association.
4. Plaintiff, responding to the Defendant's *Classified Ads*, to extend Credit at 12.5% APR Second Mortgages, appearing in the daily local newspaper, on or about August 29, 1984, made application to the defendant, FIRST UNION MORTGAGE CORPORATION (now, First Union Home Equity Corporation), through its Baton Rouge Branch Office, for an extension of credit in the aggregate amount of Thirty-nine Thousand and No/100 Dollars (\$30,900.00), to be secured by certain real estate as collateral.

5. Defendant, FIRST UNION HOME EQUITY CORPORATION ("First Union"), is a "creditor" within the definition of 15 U.S.C. § 1691a(e).
6. Plaintiff, ULRICH HUYSSEN, is an "applicant" within the definition of 15 U.S.C. § 1691a(b); and a person under 15 U.S.C. § 1691a(f).
7. Plaintiff, ULRICH HUYSSEN, as of August 29, 1984, and for all times applicable to this action, unequivocally, met all of the necessary criteria, or "Standards of Creditworthiness" described in the defendant's FIRST UNION's, Lending Policy Manual.
8. Albeit, Plaintiff met all the necessary criteria, or Standards of Creditworthiness, spelled out in FIRST UNION's Lending Policy Manual, FIRST UNION rejected Plaintiff's mortgage loan application (a Second Mortgage Real Estate Loan Application) and refused to extend credit to Plaintiff under the pretext that based on the standard formula used by the Defendant in calculating income to debt ratio on the basis of tax returns for self-employed applicants, Plaintiff's income to debt ratio would have been insufficient to service the loan as required under the guidelines of the Lending Policy Manual.
9. The Defendant's denial of Plaintiff's second mortgage real estate loan application and failure and refusal to extend credit to Plaintiff, ULRICH HUYSSEN, was (is) intentionally based on an inaccurate calculation and misrepresentation of Plaintiff's credit information, contrary to the criteria or "Standards of Creditworthiness" described in FIRST UNION's Lending Policy Manual; and that such calculation and misrepresentation was (is) intentional and pretextual; and resorted to by FIRST UNION for the purposes of discriminating

against Plaintiff based on national origin and/or religion, in circumvention of the ECOA, 15 U.S.C. § 1691 et seq.

10. The documents submitted to the Home Office of FIRST UNION by the Baton Rouge Branch Manager for Approval of Plaintiff's loan met (meet) all of the "Standards of Creditworthiness" described in FIRST UNION's Lending Policy Manual; and Plaintiff's Income to Debt Ratio was calculated to show \$2,881.02 of adjusted monthly income available to service \$2,595.70 monthly debt, which is an income to debt ratio of 1.11; and adequately met (meets) FIRST UNION'S guidelines.
11. At all times applicable to this action, the FIRST UNION was not acting in ignorance of Plaintiff's national origin, nor his religious affiliation.
12. Based on the evidence to be adduced on the trial of this action, the sole inference to be drawn, or conclusion to be reached, as grounds for FIRST UNION's failure of compliance, or for its denial of Plaintiff's mortgage loan application and refusal to extend Plaintiff credit was (is) a pretext for unlawful discrimination against Plaintiff, ULRICH HUYSEN, based on national origin (German), and/or religion (a "Gospel Minister" of the Interdenominational Mission Association), in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 et seq.

IV. DEFENDANT CLAIMS:

- (A) ESSENTIAL ELEMENTS: Defendant agrees that Plaintiff has correctly set forth the essential elements of his case.

(B) FACTS:

1. FIRST UNION engaged in no credit practices prohibited by the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 et seq., or by Regulation B of the Federal Reserve Board, 12 C.F.R. 202. In evaluating Huyssen's credit application, First Union considered no prohibited factors, nor factors having the effect of discriminating against a protected class of applicants. Instead, First Union complied with all requirements of ECOA and Regulation B in connection with the plaintiff's credit application. First Union admits that Huyssen applied for second mortgage loan for \$30,900.00 from First Union on or about August 29, 1984, and that his credit application was denied by First Union.

First Union denies that the loan application was denied by reason of either Huyssen's national origin or religion and denies that it had knowledge of either of these facts at the time the loan was denied. First Union's denial of Huyssen's credit application was not a "pretext" for "willful and intentional discrimination" against Huyssen, and the denial of the credit application was wholly unrelated to Huyssen's national origin (which he has since identified as German) or his religion (Christian).

2. Neither Huyssen's national origin nor his religion were factors relevant to the credit decision by First Union. First Union does not ever ask any credit applicant, at any time, any questions whatsoever about his or her national origin or religious preference or practices, in connection with credit applications.

3. In reviewing and evaluating Huyssen's credit applications, First Union's underwriter reviewed the applicant's credit history, the value of the proposed collateral in relation to the amount of the loan sought, the applicant's income-to-debt ratio, and the applicant's job security.
4. Whenever an applicant is self-employed, First Union calculates and evaluates the applicant's income on a basis of his past two year's federal income tax returns.
5. In reviewing and evaluating the income-to-debt ratio, in connection with Huyssen's 1984 loan application, First Union's underwriter calculated Huyssen's income-to-debt ratio, based on the 1983-1982 federal income tax returns submitted by Huyssen with his loan application. The sole reason Huyssen's loan application was denied was for insufficient income-to-debt ratio, based on calculations taken from Huyssen's federal income tax returns.
6. The calculations made by First Union's underwriter were based on its standard formula used by First Union in calculating income-to-debt ratio on the basis of tax returns for self-employed applicants. First Union uniformly applies its credit evaluation criteria to all loan applicants, and these same criteria were applied to Huyssen's application.

(C) AFFIRMATIVE DEFENSES:

1. Defendants asserts as its affirmative defense, full compliance with the ECOA.
2. Although plaintiff was an applicant and defendant a creditor for purposes of ECOA and plaintiff applied to defendant for a loan, defendant rejected plaintiff's loan solely because plaintiff did not meet the consistent criteria, applied by defendant to all applicants

for the loan plaintiff sought on the terms plaintiff sought. Further, plaintiff was given timely ECOA notices, describing the reason for loan rejection and the reasons given to plaintiff were good faith reflection of the fact that he did not qualify for the loan and were not a "pretext" for discrimination.

V. ESTABLISHED FACTS:

The following facts are established by the pleadings or are established by the stipulations or admissions of counsel:

1. Plaintiff, Huyssen was born in Meiningen, Germany; and came to the United States on May 22, 1964. Huyssen obtained an immigration visa on January 27, 1965, becoming a permanent resident of the United States.
2. Since December, 1976, Huyssen has maintained his domicile and residence in East Baton Rouge Parish, Louisiana.
3. Plaintiff is married to Gisela Propp Huyssen, who resides with him at their home at 2823 Westerwood Drive, Baton Rouge, Louisiana 70816.
4. Gisela Propp Huyssen was not a "co-signor" of Huyssen's loan application; she appeared in the application only to consent to the grant of a second mortgage on community real estate located at 514 Myrtle Street, Baker, Louisiana 70714.
5. For purposes of this action, Huyssen is an "applicant" under the definition of 15 U.S.C. § 1691a(b).
6. First Union is a business corporation; incorporated under the laws of the State of North Carolina, with its principal place of business in Charlotte, North Carolina.

7. First Union does business in East Baton Rouge Parish, Louisiana; and has a branch office at 3636 South Sherwood Forest Boulevard, Suite 690, Baton Rouge, Louisiana 70816.
8. This Court has jurisdiction; and venue is proper.
9. For purposes of this action, First Union is a "creditor" under the definition of 15 U.S.C. § 1691a(e).
10. In late August, 1984, Huyssen contacted Baton Rouge Mortgage Company, in an attempt to obtain a second mortgage loan on the property located at 514 Myrtle Street Baker, Louisiana.
11. Baton Rouge Mortgage was an independent loan broker, who, on the basis of Huyssen's credit rating, referred Huyssen to First Union.
12. On or about August 29, 1984, Huyssen applied to First Union's Baton Rouge, Louisiana Branch office for \$30,900.00 second mortgage loan, to be secured by a second mortgage on rental property owned by Huyssen and located at 514 Myrtle Street, Baker, Louisiana 70714.
13. Brian Hollenback was the Manager at First Union's Baton Rouge, Louisiana Branch at the time of Huyssen's application.
14. First Union's Baton Rouge Branch Manager, Brian Hollenback, submitted Huyssen's loan application to First Union's home office on or about September 18, 1984.
15. First Union notified Huyssen, by an ECOA notice dated October 8, 1984, that his credit application had been denied.
16. On November 5, 1984, Huyssen requested additional information as to the reason for the credit denial.

17. Shortly after November 11, 1984, Huyssen received a second ECOA notice, stating that his application was denied for the basis of insufficient income to debt ratio.
18. First Union Home Equity Corporation ("First Union") was named "First Union Mortgage Corporation" until February 2, 1987, at which time the corporate name was changed.
19. At the time of Huyssen's application, and at the present time, Ralph E. Richardson ("Richardson") is First Union's Director of Credit.
20. Richardson was the Director for First Union since 1975.

VI. CONTESTED ISSUES OF FACTS:

The contested issues of facts are:

1. Whether the Plaintiff qualified, or met the requirements, for the loan under the criteria, the "Standards of Creditworthiness," spelled out in Defendant's Lending Policy Manual?
2. Whether the reasons given by Defendant for its failure of compliance, the denial of Plaintiff's second mortgage loan application and its refusal and failure of extension of credit to Plaintiff, were "pretext" for unlawful discrimination?
3. The amount of actual damages to which Plaintiff is entitled, including, but not limited to lost profits and lost appreciation.
4. Whether Defendant's failure of compliance entitle Plaintiff to recovery of punitive damages, in addition to actual damages, against the Defendant as provided by ECOA, 15 U.S.C. § 1691e(b)?
5. Whether Plaintiff tried or undertook any action to mitigate his damages?

VII. CONTESTED ISSUES OF LAW:

The contested issues of law are:

1. Whether the Defendant eluded to a method of calculation of Plaintiff's income to debt ratio with the purpose of evading the requirements of ECOA, or whether in the absence of purposeful discrimination, equitable relief is necessary to enforce the requirements imposed by ECOA?
2. Whether Defendant, in its failure of compliance, acted contrary to its own guidelines spelled out in its Lending Policy Manual and by so doing acted in reckless disregard of the requirements of ECOA even though there was no specific intention to discriminate against Plaintiff on unlawful grounds; but, nevertheless, Plaintiff is entitled to recovery of both actual and punitive damages as provided by ECOA under Section 1691e(a) and (b)?
3. Whether any specific intent to discriminate or statistical showing of adverse impact on protected class is necessary to establish prima facie case of violation under ECOA?
4. Whether ECOA imposes a duty upon Plaintiff to undertake measures to mitigate his damages?

VIII. EXHIBITS AND WITNESSES:

The parties attach the following as appendices to the pre-trial order:

(A) Lists or schedules of all exhibits that will be offered in evidence at the trial.

1. The lists shall describe the exhibits sufficiently for ready identification.
2. The lists shall indicate those exhibits agreed by the parties to be admissible at trial.

3. With respect to each exhibit on the lists, counsel shall either agree as to admissibility of the exhibit or reach such stipulation as to the exhibit are as possible.
4. If a party objects to an exhibit to be offered against him, he shall note his objection immediately under the listing of the exhibit, as part of the list. The notation shall include citations to the Federal Rules of Evidence and other legal authorities supporting the objection.
5. At trial should any party fail to introduce any exhibit on his list, any other party may introduce that exhibit, even if he did not place the exhibit on his exhibit list.

(B) — List of witnesses, except impeachment witnesses but including rebuttal witnesses, with their addresses.

1. The parties shall divide their witnesses into "Will Call" and "May Call" witnesses. Any party listing a person on his "Will Call" list shall bear the responsibility of producing that witness at trial. At trial, should any party fail to call any witness on his "Will Call" list, any other party may call that person as his witnesses, even if he did not list the person on his list.
2. The following provisions shall apply to EXPERT witnesses:
 - (a) With respect to expert witnesses . . . names and written reports of such experts Plaintiff intends to call will be furnished to opposing counsel at least sixty (60) days before the pretrial conference; Defendant shall furnish to opposing counsel names and written reports of such experts it expects to call at least thirty (30) days before the pretrial conference.

- (b) All expert witnesses, . . . who will testify must submit written reports so that the parties can comply with this order.
- (C) Each party shall submit a final list of "Will Call" witnesses.
 - 1. A final list of "Will Call" witnessess should be forwarded to opposing counsel and filed with the clerk of Court ten (10) days before trial; all "May Call" witnesses will be deleted at that time. This restriction shall not apply to impeachment witnesses.

IX.

NO EXHIBIT OR WITNESS (except those for impeachment purposes) SHALL BE USED AT TRIAL UNLESS LISTED IN THE PRETRIAL ORDER, except for good cause shown. A "reservation of rights" to call witnesses or to introduce exhibits on the witness list or exhibit list of another party SHALL NOT CONSTITUTE A LISTING IN THE PRETRIAL ORDER.

X.

The following amendments to the pleadings are allowed:
None.

XI.

The following additional matters, to aid in the disposition of the action, were determined: None.

XII.

The probable length of the trial this case is four (4) DAYS.

14h

APPROVED BY:

Attorneys for Plaintiff:

s/JOHNNIE A. JONES
Johnnie A. Jones, Trial Attorney
and
Ann S. B. Jones
JONES & JONES,
Attorneys at Law
Taylor Building, Suit 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

Attorneys for Defendant:

s/JOSE R. TARAJANO, JR.
Kelly Wilkinson
and
Jose R. Tarajano, Jr.
RUBIN, CURRY, COLVIN & JOSEPH
A Professional Law Corporation
One American Place, Suite 1400
Baton Rouge, Louisiana 70825
Telephone: 504/383-1400

APPENDIX 'A'

JOINT LIST OF EXHIBITS:

Exhibit

1. August 29, 1984, Credit Application, with no attachments.

Exhibit

2. Calculation of Income-to-debt ratio accompanying original credit application.

Exhibit

3. Original computerized Credit Report.

Exhibit

4. Appraisal by Brian Hollenback of property at 514 Myrtle Street, Baker, Louisiana.

Exhibit

5. Unsigned equity/value sheet entitled "Huyssen Rental Income."

Exhibit

6. Copy of Ulrich Huyssen's 1983 personal financial statement.

Exhibit

7. Copy of list of rental property signed by Ulrich Huyssen.

Exhibit

8. Copy of residential lease of 514 Myrtle Street, Baker, Louisiana.

Exhibit

9. Copy of Lending Policy Manual, which applied to Huyssen's application and was used by First Union during 1984.

Exhibit

10. Deposition of Brian D. Hollenback, taken on Friday, February 26, 1987. The parties stipulated to the admissibility of the deposition, in lieu of live testimony, on the grounds that Mr. Hollenback is no longer an employee of First Union Mortgage Corporation; and, to the best of the parties' knowledge, he now resides in Florida, outside the subpoena power of this Court.

Exhibit

11. Copy of ECOA notice, dated October 8, 1984, Notice of adverse action.

Exhibit

12. Huyssen letter dated November 5, 1984.

Exhibit

13. Copy of November 12, 1984, second ECOA notice.

APPENDIX 'B'

FIRST UNION LIST OF WITNESSES

First Union *will call* the following witnesses at trial:

1. Ralph E. Richardson
(Affidavit does not give street address)
Indian Trail, North Carolina 28079
2. Ms. Pamela Kinamore
Business Address:
3636 South Sherwood Forest Boulevard, Suite 690
Baton Rouge, Louisiana 70816
3. Mr. Wendell Foushee
Business Address:
4911 Bennington Avenue
Baton Rouge, Louisiana 70808

Home Address:
1262 Glasgow Avenue
Baton Rouge, Louisiana 70808

First Union *may call* the following witnesses for trial:

1. Lane Manning
7960 Wrenwood
Baton Rouge, Louisiana
2. David James Englund
14317 Royal Oak Avenue
Baton Rouge, Louisiana 70816

3. Ms. Diane P. Furr
Business Address:
First Union Corporation
Legal Division
Charlotte, North Carolina 28288
4. Mr. Alan W. Martin
c/o Richard M. Lawrence
4526 Pearl Road
Prairieville, Louisiana 70769
5. Mr. Donald Ray Singleton
and Ms. Lorraine Singleton
c/o Raymond L. Simmons
1606 Scenic Highway
Baton Rouge, Louisiana 70802

APPENDIX 'C'

FIRST UNION'S LIST OF EXHIBITS:

First Union plans to offer the following Exhibits into evidence at the trial:

Exhibit

1. The following attachments to the August 29, 1984 credit application of Ulrich Huyssen:
 - 1.1 First Union's Loan Processing Report;
 - 1.2 First Union's Mortgage Verification to Fidelity National Bank;
 - 1.3 A copy of excerpts of Ulrich Huyssen's and Gisela P. Huyssen's 1983 Federal Income Tax Return;
 - 1.4 A copy of excerpts of Ulrich Huyssen's and Gisela P. Huyssen's 1982 Federal Income Tax Return;
 - 1.5 First Union Mortgage Company's form, Adjustable Rate Mortgage Loan Information Sheet.

Exhibit

2. Copies of foreclosures and/or sheriff's sales, occurring in the 19th Judicial District Court, East Baton Rouge Parish, Louisiana, of immovable property owned by Ulrich Huyssen, et ux, and/or World Mission for Jesus, since August 29, 1984 to the present time:
 - 2.1 Certified copy of proces verbal in Suit No. 305,781 — First Bank Mortgage vs. Huyssen, 19th Judicial District Court.

- 2.2 Certified copy of proces verbal in Suit No. 319,084 — Federal Home Loan vs. Huyssen, 19th Judicial District Court.
- 2.3 Certified copy of proces verbal in Suit No. 319,435 — Federal Home Loan vs. Huyssen, 19th Judicial District Court.
- 2.4 Certified copy of petition and sequestration order in Suit No. 324,187 — FSLIC vs. Huyssen, 19th Judicial District Court.
- 2.5 Certified copy of petition and amended petition in Suit No. 324,645 — Horizon Federal vs. Huyssen, 19th Judicial District Court.
- 2.6 Certified copy of petition and order for writ of sale and seizure in Suit No. 324,730 — First Bank Mortgage Company vs. Huyssen, 19th Judicial District Court.
- 2.7 Certified copy of petition in Suit No. 319,084 — Federal Home Loan vs. Huyssen, 19th Judicial District Court.
- 2.8 Certified copy of petition in Suit No. 319,435 — Federal Home Loan vs. Huyssen, 19th Judicial District Court.
- 2.9 Certified copy of petition in Suit No. 324,187 — FSLIC vs. Huyssen, 19th Judicial District Court.
- 2.10 Certified copy of petition in Suit No. 324,645 — Horizon Federal vs. Huyssen, 19th Judicial District Court.
- 2.11 Certified copy of petition in Suit No. 324,730 — First Bank Mortgage Company vs. Huyssen, 19th Judicial District Court.

NOTE: Plaintiff objects to this exhibit as irrelevant and immaterial and prejudicial, citing Rules 402 and 403 of the Federal Rules of Evidence.

Exhibit

3. Appraisals of the following rental properties owned by Ulrich Huyssen, et ux:

514 Myrtle Street, Baker, Louisiana
4920 Oaklan Drive, Baton Rouge, Louisiana
2413 Boxwood Street, Baker, Louisiana
3641 Cooledge Street, Baker, Louisiana
5012 Sumrall Street, Baton Rouge, Louisiana
4416 Ashland Street, Baker, Louisiana
5366 Rickover Street, Baker, Louisiana
4509 Greenwood Street, Baker, Louisiana

NOTE: Plaintiff objects to this exhibit as irrelevant and immaterial and prejudicial, citing Rules 402 and 403 of the Federal Rules of Evidence.

Exhibit

4. Certified copies of all petitions filed by Huyssen in rental collection suits from January 1, 1987 to the present time.

4.1 Certified copy of petition in Suit No. 325,517 — Ulrich Huyssen vs. Jeffrey Jones, 19th Judicial District Court.

4.2 Certified copy of petition in Suit No. 320,813 — Huyssen vs. Spangler, 19th Judicial District Court.

4.3 Certified copy of petition in Suit No. 320,815 — Huyssen vs. Ross, 19th Judicial District Court.

4.4 Certified copy of petition in Suit No. 323,045 — Huyssen vs. Clark, 19th Judicial District Court.

4.5 Certified copy of petition in Suit No. 323,047 — Huyssen vs. Stokes, 19th Judicial District Court.

4.6 Certified copy of petition in Suit No. 323,048 — Huyssen vs. Gates, 19th Judicial District Court.

4.7 Certified copy of petition in Suit No. 323,298 — Huyssen vs. Smith, 19th Judicial District Court.

- 4.8 Certified copy of petition in Suit No. 323,299 — Huyssen vs. Singleton, 19th Judicial District Court.
- 4.9 Certified copy of petition in Suit No. 323,795 — Huyssen vs. Thompson, 19th Judicial District Court.
- 4.10 Certified copy of petition in Suit No. 323,797 — Huyssen vs. Martin, 19th Judicial District Court. —
- 4.11 Certified copy of petition in Suit No. 316,661 — Huyssen vs. Carney, 19th Judicial District Court.
- 4.12 Certified copy of petition in Suit No. 311,377 — Huyssen vs. Jones, 19th Judicial District Court.
- 4.13 Certified copy of petition in Suit No. 311,800 — Huyssen vs. McCrary, 19th Judicial District Court.
- 4.14 Certified copy of petition in Suit No. 311,975 — Huyssen vs. Lockwood, 19th Judicial District Court.
- 4.15 Certified copy of petition in Suit No. 312,691 — Huyssen vs. Anthony, 19th Judicial District Court.
- 4.16 Certified copy of petition in Suit No. 317,691 — Huyssen vs. Coleman, 19th Judicial District Court.
- 4.17 Certified copy of petition in Suit No. 317,827 — Huyssen vs. Robique, 19th Judicial District Court.
- 4.18 Certified copy of petition in Suit No. 318,649 — Huyssen vs. Kendrick, 19th Judicial District Court.
- 4.19 Certified copy of petition in Suit No. 318,651 — Huyssen vs. Samuel, 19th Judicial District Court.
- 4.20 Certified copy of petition in Suit No. 319,971 — Huyssen vs. Lann, 19th Judicial District Court.
- 4.21 Certified copy of petition in Suit No. 320,380 — Huyssen vs. Cobb, 19th Judicial District Court.

23h

NOTE: Plaintiff objects to this exhibit as irrelevant and immaterial and prejudicial, citing Rules 402 and 403 of the Federal Rules of Evidence.

Exhibit

5. Expert Report of Wendell Foushee, dated July 6, 1988.

APPENDIX 'D'

HUYSEN'S LIST OF WITNESSES:

The plaintiff, ULRICH HUYSEN, *will call* the following witnesses at trial:

1. Ulrich Huyssen, Plaintiff
2823 Westerwood Drive
Baton Rouge, Louisiana 70816
2. Dr. Jan W. Duggar
Duggar & Associates, Inc.
9613 Interline Avenue
Baton Rouge, Louisiana 70809
3. Mrs. Judith Harrison
4452 Beaver Creek Drive
Greenwell Springs, Louisiana 70739
4. Jake LaBello
172 Tallwood Drive
Baton Rouge, Louisiana 70816

APPENDIX 'E'

HUYSEN'S LIST OF EXHIBITS

Plaintiff, ULRICH HUYSEN, plans to offer, in addition to the exhibits enumerated in Appendix 'A' (the Joint List of Exhibits), the following exhibits into evidence at the trial.

Exhibit

1. Income Tax Return (a copy), complete as filed by Ulrich Huyssen and Gisela P. Huyssen for the taxable year, 1983.

Exhibit

2. Income Tax Return (a copy), complete as filed by Ulrich Huyssen and Gisela P. Huyssen for the taxable year, 1982.

Exhibit

3. Affidavit Analysis and Calculation of Huyssen's "Income to Debt Ratio" by the expert witness, Dr. Jan Warren Duggar, dated March 27, 1987.

Exhibit

4. An Analysis of Ulrich Huyssen's Loan Request made to First Union Mortgage Corporation, prepared for Huyssen's by Dr. Jan Warren Duggar, dated June 16, 1988.

Exhibit

5. Sale With Assumption of Mortgage and Mortgage, from Hall to Huyssen dated March 18, 1982.



APPENDIX 'I'
JUDICIARY - PROCEDURE

28 U.S.C. § 1331.
FEDERAL QUESTION

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

APPENDIX 'J'

APPLICATION FOR CREDIT

DATE: 8/29/84

INSURED: YES NO

SOURCE: Baton Rouge Mtg.

INDIVIDUAL CREDIT — Not relying on the asset of another person as the basis for repayment of the credit requested. Complete sections A, C, and D.

JOINT CREDIT WITH ANOTHER PERSON — Complete Sections A, B, C, and D.

AMOUNT REQUESTED: 30,900

PURPOSE OF LOAN: Misc. Improvements to Rental

TERM (YRS.): 10 - 12.5 ART

SECTION A - INFORMATION REGARDING APPLICANT

NAME (FIRST, MIDDLE, LAST): Ulrich Huyssen

AGE: 40

BIRTHDATE: 3/14/44

PRESENT ADDRESS: 4221 Rue De Valeur

YEARS THERE: 7-1/2

2j

SOC. SEC. NO.: 333-42-1407

CITY: Baker

STATE: LA

ZIP: 70714

TELEPHONE NUMBER: 504-775-3216 / 775-1243

PREVIOUS ADDRESS: N/A

YEARS THERE:

MARRIED UNMARRIED SEPARATED

NAME OF YOUR BANK: 1st State Bnk. of Baker

CHECKING SAVINGS

NAME AND ADDRESS OF PRESENT EMPLOYER:
World Missions for Jesus

TELEPHONE NUMBER: 504-775-3216

POSITION OR TITLE: Missionary

LENGTH OF EMPLOYMENT: 16 Years _____ Months

PRESENT SALARY OR COMMISSION: Net Gross
\$14,500 Plus Hse. per yr.

NUMBER OF DEPENDENTS: 5

AGES OF DEPENDENTS: 33, 17, 11, 3, 1

ALIMONY, CHILD SUPPORT, OR SEPARATE MAINTENANCE INCOME NEED NOT BE REVEALED IF YOU DO NOT WISH TO HAVE IT CONSIDERED AS A BASIS

FOR REPAYING THIS OBLIGATION. ALIMONY,
CHILD SUPPORT, SEPARATE MAINTENANCE RE-
CEIVED UNDER: COURT ORDER WRITTEN
AGREEMENT ORAL UNDERSTANDING

OTHER INCOME: \$67,558 per yr.

SOURCES OF OTHER INCOME: Rental

IS ANY INCOME LISTED IN THIS SECTION LIKELY
TO BE REDUCED BEFORE THE CREDIT REQUESTED
IS PAID OFF? YES (EXPLAIN ON SEPARATE
SHEET) NO

NAME AND ADDRESS OF PREVIOUS EMPLOYER: N/
A

YEARS THERE:

NAME OF NEAREST RELATIVE NOT LIVING WITH
YOU: Erika Huyssen

ADDRESS: Natruter St. 12 45 Osnabrueck, W. Germany

RELATIONSHIP: Mother

*SECTION B - INFORMATION REGARDING JOINT
APPLICANT OR OTHER PARTY*

NAME (FIRST, MIDDLE, LAST): Gisela Propp Huyssen

AGE: 33

BIRTHDATE: 7/19/51

PRESENT ADDRESS: 4221 Rue De Valeur

YEARS THERE: 7-1/2

SOC. SEC. NO.:

CITY: Baker

STATE: LA

ZIP: 70714

TELEPHONE NUMBER: 504-775-3216

PREVIOUS ADDRESS: N/A

YEARS THERE:

MARRIED UNMARRIED SEPARATED

NAME OF YOUR BANK: 1st State Bnk. of Baker

CHECKING SAVINGS

NAME AND ADDRESS OF PRESENT EMPLOYER:

Housewife

TELEPHONE NUMBER:

POSITION OR TITLE:

LENGTH OF EMPLOYMENT:

PRESENT SALARY OR COMMISSION: Net Gross
\$ - 0 - per

NUMBER OF DEPENDENTS: 0

AGES OF DEPENDENTS: N/A

ALIMONY, CHILD SUPPORT, OR SEPARATE MAINTENANCE INCOME NEED NOT BE REVEALED IF YOU DO NOT WISH TO HAVE IT CONSIDERED AS A BASIS FOR REPAYING THIS OBLIGATION. ALIMONY, CHILD SUPPORT, SEPARATE MAINTENANCE RECEIVED UNDER: COURT ORDER WRITTEN AGREEMENT ORAL UNDERSTANDING

OTHER INCOME: - 0 - per

SOURCES OF OTHER INCOME: N/A

IS ANY INCOME LISTED IN THIS SECTION LIKELY TO BE REDUCED BEFORE THE CREDIT REQUESTED IS PAID OFF? YES (EXPLAIN ON SEPARATE SHEET) NO

NAME AND ADDRESS OF PREVIOUS EMPLOYER: N/A

YEARS THERE:

NAME OF NEAREST RELATIVE NOT LIVING WITH YOU: Werner Propp

ADDRESS: Fichlestr #5 7443 Trickenhausen, W. Germany

RELATIONSHIP: Parents

SECTION C - INFORMATION REGARDING OUTSTANDING DEBTS (Including all applicants)

AUTOMOBILES - MAKE: 84 Ford

FINANCED BY: Capital Bank

MAKE: 84 Mercedes

FINANCED BY: 1st State Bank

OUTSTANDING DEBTS (INCLUDE CHARGE ACCOUNTS, INSTALLMENT CONTRACTS, CREDIT CARDS, RENT, MORTGAGES, ETC. USE SEPARATE SHEET IF NECESSARY.)

CREDITOR OR REFERENCE,
FIRST LIST MORTGAGES, THEN AUTO,
THEN OTHERS: Capital Savings & Loan

TYPE OF DEBT OR ACCT NO.: 1st on Res.
NAME IN WHICH ACCT. CARRIED: Joint
ORIGINAL DEBT: 54,000
PRESENT BALANCE: 49,500
MONTHLY PAYMENT: 436.00

CREDITOR OR REFERENCE,
FIRST LIST MORTGAGES, THEN AUTO,
THEN OTHERS: Mortgage Associates

TYPE OF DEBT OR ACCT NO.: 1st on Rental/193447-2
NAME IN WHICH ACCT. CARRIED: Joint
ORIGINAL DEBT: -0-
PRESENT BALANCE: 11,000
MONTHLY PAYMENT: 136.00

CREDITOR OR REFERENCE,
FIRST LIST MORTGAGES, THEN AUTO,
THEN OTHERS: Capital Bank

TYPE OF DEBT OR ACCT NO.: 84 Ford
NAME IN WHICH ACCT. CARRIED:
ORIGINAL DEBT: 14,277
PRESENT BALANCE: 12,492
MONTHLY PAYMENT: 297.00

CREDITOR OR REFERENCE,
FIRST LIST MORTGAGES, THEN AUTO,
THEN OTHERS: 1st State Bank

TYPE OF DEBT OR ACCT NO.: Mercedes
NAME IN WHICH ACCT. CARRIED:
ORIGINAL DEBT: 40,000
PRESENT BALANCE: 23,418
MONTHLY PAYMENT: 525.95

CREDITOR OR REFERENCE,
FIRST LIST MORTGAGES, THEN AUTO,
THEN OTHERS: Am Bnk Bnk Crd

TYPE OF DEBT OR ACCT NO.: Res.
NAME IN WHICH ACCT. CARRIED:
ORIGINAL DEBT: 3,804
PRESENT BALANCE: 508
MONTHLY PAYMENT: 58.00

CREDITOR OR REFERENCE,
FIRST LIST MORTGAGES, THEN AUTO,
THEN OTHERS: 1st State Bank

TYPE OF DEBT OR ACCT NO.:
NAME IN WHICH ACCT. CARRIED:
ORIGINAL DEBT: 35,000
PRESENT BALANCE: 3,572
MONTHLY PAYMENT: 676.00

TOTALS:

ORIGINAL DEBT:
PRESENT BALANCE: 100,490
MONTHLY PAYMENT: 2,128.95

9/24/84 to income to debt ins (sic) income verification B.
Hollenback

OTHER OBLIGATIONS - (SUCH AS PAYMENT OF ALI-
MONY, CHILD SUPPORT, SEPARATE MAINTENANCE,
ETC.)

APPLICANT

TYPE OBLIGATION(S):

AMOUNT:

FREQUENCY:

JOINT APPLICANT

TYPE OBLIGATION(S): N/A

AMOUNT:

FREQUENCY:

*SECTION D - INFORMATION REGARDING
PROPERTY TO BE MORTGAGED*

3-1/2 Years

PROPERTY TO BE MORTGAGED: 514 Myrtle, Baton Rouge, LA

LOT SIZE:

LEASED:

TYPE OF PROPERTY:

GROSS PURCHASE PRICE: \$50,000

IMPROVEMENTS: \$500

PRICE TOTAL COST: \$50,500

TITLE IN NAME OF: Ulrich & Gisela Huyssen

RENTS RECEIVED: \$470.00

ORIGINAL FIRST MORTGAGE: \$

FIRST MORTGAGE AND ACCT. NO.: Mortgage Associates
193447-2

PAYMENTS: \$136.00

BAL. DUE FIRST MTGE.: \$11,000

IMPROVEMENT ALREADY MADE: Paint, Maint.

IMPROVEMENT TO BE MADE:

WARRANTY OF APPLICANT(S)

The undersigned Applicant(s) warrants and represents that all statements, representations and warranties appearing hereon are correct, being made by them (and expressly relied upon by First Union Mortgage Corporation) to induce this Lender to approve their within Loan Application. Applicant(s) additionally warrant that any and all other papers in connection with this Loan, are true and made for the sole purpose of procuring this Loan and to show their financial status. You are authorized to check my credit and employment history and to answer questions about your credit experience with me. This application includes additional representations on reverse side hereof being incorporated here by reference.

(WITNESS): s/BRIAN HOLLENBACK and s/w MVI over phone

(APPLICANT) (SEAL):

(CO-APPLICANT) (SEAL):

***VOLUNTARY INFORMATION FOR GOVERNMENT
MONITORING PURPOSES***

If this loan is for purchase of a home, the following information is requested by the Federal Government to monitor this lender's compliance with Equal Credit Opportunity and Fair

Housing Laws. The law provides that a lender may neither discriminate on the basis of this information nor on whether or not it is furnished. Furnishing this information is optional. If you do not wish to furnish the following information, please indicate below.

Applicant: I do not wish to furnish this information (INITIALS):

Race/National Origin: American Indian Alaskan Native
 Asian Pacific Islander Black Hispanic White
 Other (Specify):

Sex: Female Male

Co-Applicant: I do not wish to furnish this information (INITIALS):

Race/National Origin: American Indian Alaskan Native
 Asian Pacific Islander Black Hispanic White
 Other (Specify):

Sex: Female Male

FOR FUMC USE ONLY (Notes and Explanations)

Adjustable Rate Mortgage Information (How Given): Sent to cust. in mail 8/29/84

HUYSEN RENTAL INCOME

RENTAL GROSS PER MONTH:	\$16,725.00
	$\times 12$
	<u>\$200,700.00</u>
TOTAL MONTHLY PAYMENT:	6,612.11
	$\times 12$
	<u>79,345.32</u>
GROSS RENTAL:	200,700.00
LESS 10% VACANCY:	<u>(20,070.00)</u>
	180,630.00
LESS PAYMENTS:	<u>(79,345.00)</u>
NET PER YEAR:	101,285.00
LESS 1/3 FOR MAINTENANCE:	<u>(33,727.00)</u>
ADJUSTED NET RENTAL INCOME:	<u><u>\$67,558.00</u></u>



APPENDIX 'K'

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

**ULRICH HUYSSEN
VERSUS
FIRST UNION MORTGAGE CORPORATION**

**CASE NUMBER 86-077
DIVISION 'A'**

AFFIDAVIT

**STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE**

BEFORE ME, the undersigned Notary Public for East Baton Rouge Parish, Louisiana, personally appeared JAN WARREN DUGGAR, PH.D., an adult resident of East Baton Rouge Parish, Louisiana, who first being duly sworn did state:

1. I am an Economist with a Doctor of Philosophy in Economics received from Florida State University in 1967. I have been active as a consultant to financial institutions since 1968. I was the Chairman and CEO of an insurance company with a mortgage division from 1982 through 1985. The mortgage division was an FHA, VA, and FNMA approved lender. I was the Chairman of the Board of a consumer loan office from 1982 through 1985. I am familiar with all aspects of mortgage lending.

2. I have reviewed the documents attached as Exhibit "A" to this Affidavit, which I understand were contained in the files of First Union's Baton Rouge branch office and submitted in September, 1984, to First Union's home office for approval.
3. I have reviewed the Lending Policy Manual of First Union Mortgage Corporation provided to me by plaintiff's counsel.
4. The documents submitted to the home office for approval meet all of the Standards of Creditworthiness described in the Lending Policy Manual.
5. Specifically, Form FUMC 235, Calculation, Income to Debit Ratio, reports \$2,881.02 available to service \$2,595.70 of debt monthly. This is the only document prepared in September 1984 dealing with the income to debt ratio. It shows adequate income and meets First Union's Lending Policy guidelines. There is no document available disputing or refuting the income debt ratio in the records of the loan file.
6. After the law suit was instituted, various depositions of employees of First Union have been taken. In these depositions the employee's have been asked to calculate the income to debt ratio. These calculations all materially differ from the calculation of income to debt ratio included in the loan file.
7. The current calculations of income to debt ratio provided by Ralph E. Richardson in C-1 and C-2 are flawed in the treatment of depreciation and exclude certain minor, regular income items. The correct treatment of Mr. Huyssen's income as reported on this U.S. Individual Income Tax Return is shown in Table 1. The difference is that Mr. Richardson ignores Mr. Huyssen's business loss (\$15,039) and income from interest, dividends and oil royalties (\$4,570). Further, when he adds depreciation back, he treats it as a taxable event. The adding back of

depreciation is *never* a taxable occurrence. It should be shown as non taxable income. The correct treatment shows \$2,622.49 available to service \$2,595.70 of debt monthly.

8. The First Union Standards of Creditworthiness (page 4) indicate that if an applicant ". . . does not meet any of the above standards, this weakness may be offset by exceptional strength in other factors." Additional strength can be attributed to the Huyssen application due to his capital gains income on both the 1982 and 1983 income tax return. Some of this capital gain is reoccurring on installment purchases. Further, the first mortgage balance is so low relative to the value of the property, the second mortgage position is well protected in the event of default. These two factors add exceptional strength to the loan request.

s/JAN WARREN DUGGAR
Jan Warren Duggar

SWORN TO AND SUBSCRIBED before me, Notary Public of East Baton Rouge Parish, State of Louisiana, on this 27th day of March, 1987.

s/JOHNNIE A. JONES
Johnnie A. Jones, Notary Public
East Baton Rouge Parish
State of Louisiana

TABLE 1
CALCULATION OF INCOME TO DEBT RATIO

TAXABLE	1983 INCOME TAX RETURN
Housing Allowance:	\$10,800.00
Rental Property:	(23,517.00)
Interest Income:	4,418.00
Dividend Income:	135.00
Oil Royalty:	17.00
Business Income:	<u>(15,039.00)</u>
Total Taxable Income	\$(23,186.00)
 NON TAXABLE	
Depreciation, Schedule C:	\$11,440.00
Depreciation, Schedule E:	<u>68,965.00</u>
Total Non Taxable Income	<u>80,405</u>
 Total Taxable Income:	(23,186.00)
Net Tax Factor:	70%
Net Taxable Income:	(23,186.00)
Non Taxable Income:	<u>80,405.00</u>
Total Net Annual Income:	57,219.00
 Divided by 12 Months	
Net Monthly Income	4,768.00
Times 55% for FUMC's	
Debt to Income Ratio	<u>\$2,622.00</u>

(Debt to Income Ratio is Greater than Total Monthly Obligations of \$2,595)

5k

CALCULATION
INCOME TO DEBT RATIO

CREDITOR: Capital Savings & Loan

MONTHLY PAYMENT: \$436.00

CREDITOR: Capital Bank

MONTHLY PAYMENT: \$297.45

CREDITOR: 1st State Bank

MONTHLY PAYMENT: \$525.95

CREDITOR: Am Bank M/Card

MONTHLY PAYMENT: \$58.00

CREDITOR: 1st State Bank

MONTHLY PAYMENT: \$676.00

ESTIMATED TAXES & INSURANCE FUMC 1ST MORTGAGES ONLY:

FUMC PAYMENT: \$452.30

SUB TOTAL: \$2,445.70

UTILITY ALLOWANCE (+): \$150.00

TOTAL MONTHLY OBLIGATIONS: \$2,595.70

VERIFIED INCOME: Applicant: Depreciation Hse. Allowance/Primary Employment: \$22,240.00

VERIFIED INCOME: Other Sources - Rental Income less 10% & maint. 1/3: \$67,558.00

VERIFIED INCOME: Co-Applicant:

Primary Employment:

6k

Other Sources:

TOTAL GROSS INCOME (TAXABLE): \$89,798.00

VERIFIED INCOME:

ANNUALIZED GROSS AMOUNT - NONTAXABLE:

TOTAL GROSS INCOME (NON TAXABLE):

TOTAL TAXABLE INCOME: \$89,798.00

(X'S) NET TAX FACTOR: 70%

NET TAXABLE INCOME: \$62,858.60

NON TAXABLE INCOME (+):

TOTAL NET ANNUAL INCOME: \$62,858.60

+ BY # MONTHS: 12

NET MONTHLY INCOME: \$5,238.22

(X'S) 55% FOR FUMC'S DEBT TO INCOME RATIO:
\$2,881.02

1L

APPENDIX 'L'

**FIRST UNION MORTGAGE CORPORATION
POLICY MANUAL**

SECTION: LENDING

SUBJECT: POLICY

DATE ISSUED OR REVISED: 11-10-80

PAGE NO.: 1

SECTION: 300

TOPIC: .001

In the General Section under the subject Structure, Purpose, and Scope, we find a discussion of the lending policy of FUMC.

It is important to re-emphasize two points which are: *It is the policy of FUMC to provide credit consistent with sound credit practice and prudent business judgement.*

It is further the policy of FUMC to review loan request based upon information gathered in the credit application and investigation procedures. *Credit is granted based upon ability to repay, disregarding sex, age, race, marital status or other prohibited factors.* The securing of the loan with a 1st or 2nd Deed of Trust as collateral is felt to be a prudent lending policy, not a primary credit granting factor.

To assist FUMC personnel in evaluating loan request in a consistent manner "Standard Appraisal Guidelines" and "Lending Guidelines and Criteria" have been developed for use as FUMC's general policy statement. In evaluating credit

2L

these guidelines will be reviewed and as a matter of policy adhered to; however, certain situations may occur when one set of factors greatly outweighs the others and exceptions to the above guidelines may occur. These exceptions will be closely monitored by FUMC management personnel to assure the safekeeping of sound credit practices by FUMC.

FIRST UNION MORTGAGE CORPORATION
POLICY MANUAL

SECTION: LENDING

SUBJECT: POLICY - STANDARDS OF CREDITWORTHI-
NESS

DATE ISSUED OR REVISED: 8-26-81

PAGE NO.: 2

SECTION: 300

TOPIC: .001

SUB TOPIC: .01

- I. A complete, written application is necessary on all loan request.
- II. Source of Income -- must be stable with a probable continuity for the term of the loan.
 - A. Employment — (other than self-employed) as sources of income should reflect one year at present employment or two at previous employment.
 3. Source of income is other than employment (e.g. retirement benefits, rental income, public assistance benefits, alimony/child support, stock dividends, etc.)
 1. Verify source of income
 2. Ascertain probable continuity of income.
 - C. Employment of self-employed individuals should reflect income for 2 years at present employment and two years at a previous employment of similar nature.
- III. Adequacy of Income.
 - A. Verify all income.
 - B. Income must be sufficient to meet normal living expenses plus service all debts.

1. ADD: All income upon which loan decision is to be based (total should be net of taxes)
2. ADD: All monthly debt payments (include payment on requested loan) plus monthly shelter payment (rent or mortgage payment) plus allowance for utilities.
3. Total payments (No. 2 above) should never exceed 55% of net income (No. 1 above).

IV. Stable Residency

- A. Two years at present or previous address, unless loan is for purchase of residence.
- B. Transient types of residency (hotels, rooming houses, etc.) are not acceptable.

V. Credit History

- A. All FUNB records to be checked direct (consumer loans, commercial, revolving credit) We should use FUNB's CIS system to check all loans made in N.C.
- B. Up to date (no older than 6 months) credit report reflecting a reasonable history of prompt repayment of all obligations.

Unacceptable ratings include:

1. Bankruptcy unless applicant(s) can offer an acceptable explanation.
2. Repossessions or charge offs unless applicant(s) can offer an acceptable explanation.
3. Accounts reflecting payments made 60 or more days late unless applicant can offer an acceptable explanation.

VI. Collateral

- A. On residential loans the amount loaned should not exceed FUMC guidelines for the type of collateral being secured.
- B. With individual applicants, if the collateral being pledged is jointly owned, you must require the signature of the co-owner of the property on necessary documents to create a valid lien. You may *not* require the co-owner's signature on the note.

VII. Exceptions to all of the above may be made when security offered is prime collateral with acceptable equity margins.

VIII. If applicant(s) does not meet these standards, the loan request may be considered with a co-maker or guarantor who does meet these standards. However, if the applicant(s) has (have) a bad credit history, you should not request or consider a co-maker or guarantor.

If applicant(s) does (do) not meet any of the above standards, this weakness may be offset by exceptional strength in other factors. For example, a recent college graduate may not have the required two years employment and credit history, but he may have a larger than normal income with little or no debts to service.

FIRST UNION MORTGAGE CORPORATION
POLICY MANUAL

SECTION: LENDING

SUBJECT: DOCUMENTATION - INCOME VS DEBT CALCULATION - FUMC 235 REV. 6-81

DATE ISSUED OR REVISED: 11-19-81

PAGE NO.: 36-37

SECTION: 300

TOPIC: .002

SUB TOPIC: .10

In an attempt to standardize our approach in qualifying an applicant on ability, we have developed a debt to income calculation form. By using this form in qualifying all of our loan applicants, we should eliminate the expense and time in putting together a submission only to find it's a reject for ability. Below is a brief outline of key factors in properly using this form.

- (1) The left column "creditor" is designed to use in listing those debts and associated payments that our borrower will have after our loan is made. A separate space is provided for the listing of our payment. In this section we have allowed for the addition of a "utility" allowance. To keep this allowance on a consistent basis you should \$125 for any home 2,000 square feet or less and \$150 for any home over 2000 square feet. Any deviation from these figures must be explained on the reverse of this form. The addition of all figures in this Volume are to be recorded as "Total Monthly Obligations."
- (2) The right side "Verified" income is for the recording by borrower and type of income that FUMC has been able to verify which is taxable. Income should be shown as "annual gross" figures. We realize some income such as

social security is non-taxable and should be considered as "net" income. Any non-taxable verified income should be shown in the middle right column.

(3) The lower right side is for the calculation of FUMC's debt to income ratio.

- (a) Enter the borrower's "Total annual taxable income" from volume above.
- (b) Multiply this income by a factor to produce "net" after tax income. This factor is 70% except in Florida and Tennessee where it is 75%.
- (c) This computation yield "net annual taxable income".
- (d) Add to this figure any non-taxable income shown in the column for "non-taxable" income.
- (e) We now have calculated the borrower's "Net Annual" income.
- (f) This annual figure must now be reduced by dividing it by the appropriate number of months for which it is received (which is usually 12)
- (g) Now we have our "net" monthly income to which we can apply our debt to income percentage per company policy.
- (h) Multiply the "net" monthly income by 55% our debt to income percentage, to determine the amount we would allow in monthly obligations.

After these calculations compare your results to "total monthly obligations" in the left hand column. If your calculation yields the higher number, we have an acceptable debt to income ratio. If your calculation is lower than "total monthly obligations" our borrower(s) lack ability and should be rejected.

This form is to accompany all submissions as well as becoming a part of your closed loan package.

CALCULATION
INCOME TO DEBT RATIO

CREDITOR: First Mortgage Payment
MONTHLY PAYMENT: \$

CREDITOR: FUMC Payment
MONTHLY PAYMENT: \$

CREDITOR: Sub Total
MONTHLY PAYMENT: \$

CREDITOR: Utility Allowance (+)
MONTHLY PAYMENT: \$

CREDITOR: Total Monthly Obligations
MONTHLY PAYMENT: \$

VERIFIED INCOME: Applicant - Primary Employment
ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: Applicant - Other Sources
ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: Applicant - Other Sources
ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: Co-Applicant - Primary Employment
ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: Co-Applicant - Other Sources
ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: Co-Applicant - Other Sources
ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: Total Gross Income (Taxable)
ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: 1.

ANNUALIZED GROSS AMOUNT - NONTAXABLE: \$

VERIFIED INCOME: Co-Applicant - Other Sources

ANNUALIZED GROSS AMOUNT - NONTAXABLE: \$

VERIFIED INCOME: 2.

ANNUALIZED GROSS AMOUNT - NONTAXABLE: \$

VERIFIED INCOME: Total Gross Income (Non Taxable)

ANNUALIZED GROSS AMOUNT - NONTAXABLE: \$

VERIFIED INCOME: Total TAXABLE Income

ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: (X's) Net Tax Factor

ANNUALIZED GROSS AMOUNT - TAXABLE: %

VERIFIED INCOME: Net TAXABLE Income

ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: NON TAXABLE Income (+)

ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: Total Net Annual Income

ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: + by # Months

ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: Net Monthly Income

ANNUALIZED GROSS AMOUNT - TAXABLE: \$

VERIFIED INCOME: (X's) % For FUMC's Debt to Income
Ratio

ANNUALIZED GROSS AMOUNT - TAXABLE: \$

FIRST UNION MORTGAGE CORPORATION
POLICY MANUAL

SECTION: LENDING

SUBJECT: DOCUMENTATION - MORTGAGE VERIFICATION (FUMC 11) Rev. 12-81

DATE ISSUED OR REVISED: 3-10-82

PAGE NO.: 38

SECTION: 300

TOPIC: .002

SUB TOPIC: .11

The "mortgage verification" is designed to provide FUMC an exact 1st and or 2nd mortgage balance, plus credit experience on the loan applicant.

This verification is *required* on all FUMC loan request. This information may be gathered by:

(1) Telephone — All information that the 1st mortgagee will provide should be gathered and so noted on the appropriate space. The section "Information released by" must be completed when telephone verification is used and appropriate signature of FUMC personnel so indicated.

(2) By Mail — If telephone verification is not possible the mortgage verification form must be mailed to the 1st mortgagee. It is imperative that a stamped-self addressed envelope accompany the mortgage verification request. All mail request must contain name of property secured and be signed by at least one applicant.

NOTE: A "Mortgage Verification" is also required on existing FUMC loans that are being refinanced or renewed. This information is to be gathered from local branch records. See refinance page 12, section 300 for additional data to be included on this form.

NOTE: If FUMC is making a "junior" mortgage to a customer whose primary mortgage is held by "The Farmers Home Administration," we must have written approval from the 1st mortgage holder prior to closing our loan and recording our lien.

—Copy of sample subordination form attached—

NOTE: Many times an escalation of the rate and monthly payment will cause our customer to exceed our standard debt to income ratio. Every effort must be made prior to submission to verify the terms and conditions of the 1st mortgage assumption.

FIRST UNION MORTGAGE CORPORATION
POLICY MANUAL

SECTION: LENDING

SUBJECT: GENERAL LOAN DECLINATION/REJECTION

DATE ISSUED OR REVISED: 3-10-82

PAGE NO.: 102

SECTION: 300

TOPIC: .003

SUB TOPIC: .03

Not all loan request are of the nature to permit acceptance by FUMC. Many request must be completely declined or altered severely. Due to this we have designed the "Fair Credit Reporting & Equal Credit Opportunity Acts Notice" (FUMC 67 Rev. 1/82) and the "Reason for Adverse Action" (FUMC 24).

These forms were designed to provide FUMC a method by which to notify customers of loan request that were declined or terms altered. It was further designed to comply with the Federal "Fair Credit Reporting Act" and "Equal Credit Opportunity Act" both of which make certain demands upon FUMC. Additionally, all loans "cancelled" by the applicants should be so recorded on FUMC 67 Rev. 1/82 and a copy mailed to the applicants. The correct completion and thorough understanding of this form is mandatory. An example of the correct completion and use of these forms accompany the attached sample form.

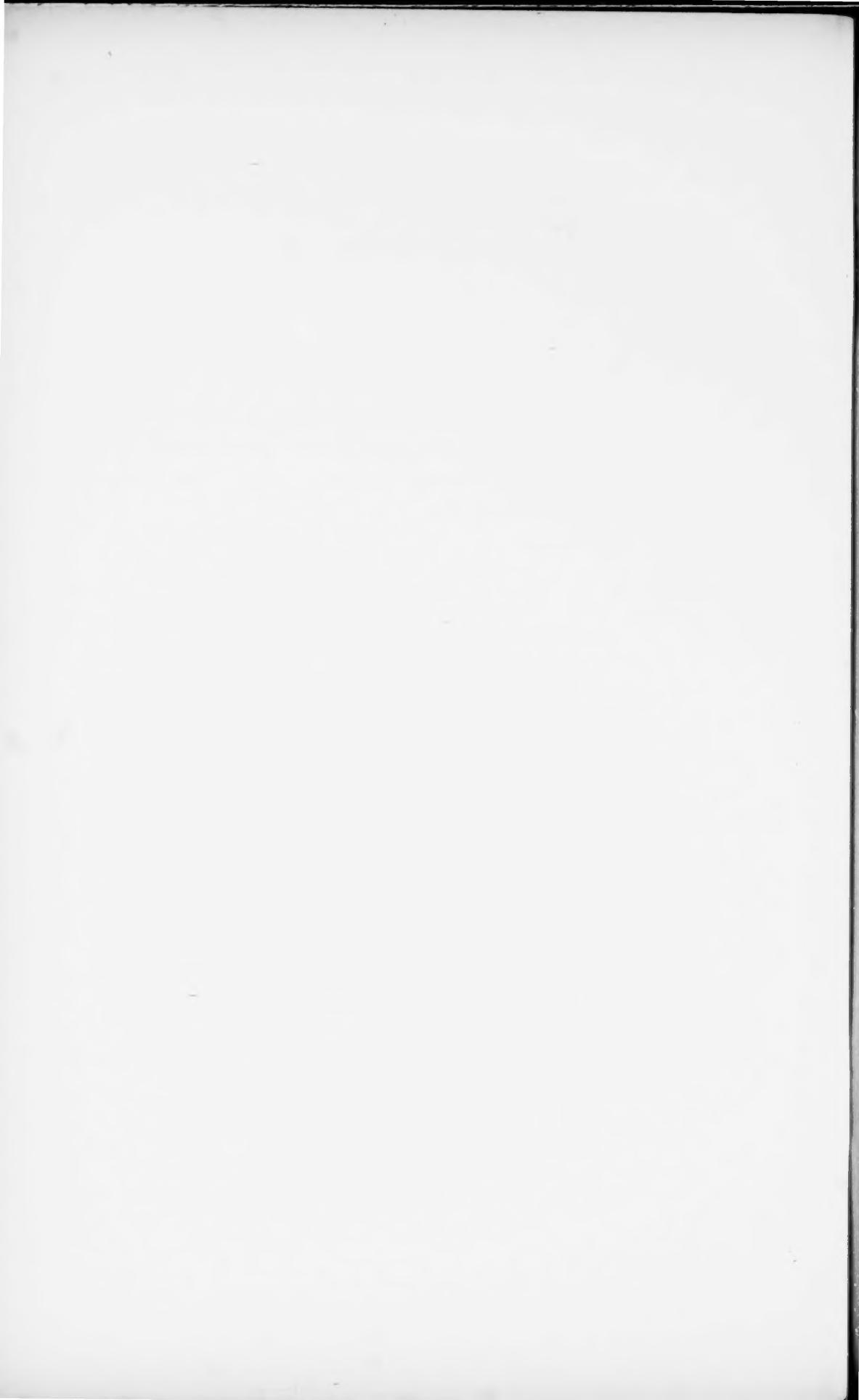
NOTE: For each loan that is rejected, cancelled, etc. the branch manager must date, initial, and explain the reject or cancellation on the face of the application.

APPENDIX 'M'

AMENDMENT 7 - CONSTITUTION

AMENDMENT VII - CIVIL TRIALS

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.



1n

APPENDIX 'N'

**IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA**

ULRICH HUYSSEN,

Plaintiff

v

FIRST UNION MORTGAGE CORPORATION,

Defendant

**CIVIL ACTION NO. 86-77
SECTION 'A'**

NOTICE OF DEPOSITION

Pam Kinamore, Manager

First Union Mortgage Corporation

3636 South Sherwood Forest Boulevard

Suite 690

Baton Rouge, Louisiana 70816

Brian Hollenback, Former Manager

First Union Mortgage Corporation

c/o Baton Rouge Mortgage, Inc.

8738 Quarters Lake Road

Baton Rouge, Louisiana 70809

David Englund

8674 Quarters Lake Road

Baton Rouge, Louisiana 70809

D Lane Manning, President
Baton Rouge Mortgage, Inc.
8732 Quarters Lake Road
Baton Rouge, Louisiana 70809

PLEASE TAKE NOTICE that pursuant to Federal Rules of Civil Procedure the plaintiff, ULRICH HUYSSEN, will take the depositions of the following named witnesses before a duly authorized Court Reporter at the time and place hereinafter noted.

Counsel for the defendant, FIRST UNION MORTGAGE CORPORATION, is hereby notified to appear and take part as they deem appropriate.

TO BE DEPOSED:

1. Pam Kinamore
2. Brian Hollenback
3. David Englund
4. D Lane Manning

WHEN:

9:30 a.m. on Monday, February 23, 1987

WHERE:

Metropolitan Reporters
Taylor Building, Suite 315
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-1700

Pursuant to Rule 30(b)(5) of the Federal Rules of Civil Procedure, please bring with you and produce at the February 23, 1987, deposition any and all documents contemplated within

the meaning or definition of Rule 34(a) of the Federal Rules of Civil Procedure, which documents are in your possession, custody, and control in connection with the Application dated August 29, 1984, by ULRICH HUYSEN, and under submission date of September 18, 1984, to the defendant, FIRST UNION MORTGAGE CORPORATION, at its Branch Office in Baton Rouge, Louisiana, under Account Number 048-018436, requesting an aggregate amount of \$30,900.00.

Particularly, but not exclusively, bring any and all documentations which show how the "Income/Debt Ratio" was calculated; and the *entire Minutes of The Underwriting Department* of First Union Mortgage Corporation (FUMC) relative and pertaining to the Loan Approval of Plaintiff's application of August 29, 1984.

Also bring the *Loan Register* of the Baton Rouge Branch of FUMC for the period commencing June 1, 1984, and ending December 31, 1984, inclusively.

Bring and produce a list or roster of the names of the Loan Officer of FUMC who calculated the "Income/Debt Ratio" relative to Plaintiff loan Application.

Bring and produce a list or roster of the names of the Committee Members of The Underwriting Department of FUMC who rejected Plaintiff's loan Application dated August 29, 1984, and submitted to FUMC on September 18, 1984, under Account Number 048-018436 of the Baton Rouge Branch of FUMC.

Bring and produce any and all documentations which FUMC forwarded or submitted to Comptroller of the Currency, in both Washington and the Atlanta Offices of the Comptroller of the Currency, relative to FUMC's handling of Plaintiff's loan Application.

These depositions will continue from day-to-day until completed, subject to such modifications as may be mutually agreed upon by counsel attending the taking of these depositions.

Attorney for Plaintiff:

s/JOHNNIE A. JONES
Johnnie A. Jones, Trial Attorney
JONES & JONES
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

CERTIFICATE OF SERVICE

Undersigned counsel of record for the plaintiff, Ulrich Huyssen, does hereby certify that a copy of the above and foregoing Notice of Depositions is, by regular United States Mail, first-class postage prepaid, being forwarded to opposing counsel of record, addressed as follows:

Ms. Kelly M. Wilkinson
RUBIN CURRY COLVIN & JOSEPH
A Professional Law Corporation
One American Place, Suite 1400
Baton Rouge, Louisiana 70825
Telephone: 504/383-1400

Baton Rouge, Louisiana, this 11 day of February 1987.

s/JOHNNIE A. JONES
Johnnie A. Jones, Trial Attorney
JONES & JONES
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ULRICH HUYSSEN,

Plaintiff,

v.

FIRST UNION MORTGAGE CORPORATION,

Defendant

CASE NUMBER 86-77-A

DEPOSITION SUBPOENA

TYPE OF CASE: CIVIL CRIMINAL

SUBPOENA FOR: PERSON DOCUMENT(S) OR
OBJECT(S)

TO:

Pam Kinamore, Manager

FIRST UNION MORTGAGE CORPORATION

3636 South Sherwood Forest Boulevard

Suite 690

Baton Rouge, Louisiana 70816

Telephone: 504/291-5966

YOU ARE HEREBY COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE:

Metropolitan Reporters
Taylor Building, Suite 315
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-1700

DATE AND TIME:

Monday, February 23, 1987, 9:30 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

1. Any and all documentations in your possession, custody, and control in connection with the loan Application of ULRICH HUYSSEN, dated August 29, 1984, under September 18, 1984, submission date to FIRST UNION MORTGAGE CORPORATION as Account Number 048-018436 (from Baton Rouge, Louisiana Branch), requesting an extension of credit in the amount of \$30,640.00, or an aggregate amount of \$30,900.00.
2. Any and all documentations which show how the "Income/Debt Ratio" was calculated.
3. The "entire minutes" of the Underwriting Department of First Union Mortgage Corporation (FUMC) relative and pertaining to the Loan Approval of the application of ULRICH HUYSSEN, dated August 29, 1984.
4. The "Loan Register" of the Baton Rouge Branch of FUMC for the period commencing June 1, 1984, and ending December 31, 1984, inclusively.

*If not applicable, enter "none."

5. The roster or a list of the names and addresses of Loan Officers, or members of the Underwriting Department of FUMC, who calculated the "Income/Debt Ratio" relative or pertaining to the loan Application of ULRICH HUYSEN, dated August 29, 1984, under submission date of September 18, 1984, to FUMC from its Baton Rouge, Louisiana Branch, under Account Number 048-018436.

6. Any and all documentations which FUMC forwarded or submitted to the Comptroller of the Currency, in both Washington and the Atlanta Offices of the Comptroller of the Currency, relative and pertaining to FUMC's handling of the loan Application of ULRICH HUYSEN, dated August 29, 1984. [Referenced under Correspondence Number 0620850003260, Federal Trade Commission, Washington, DC 20580, letter dated 29 October 1984.]

Please see additional information on reverse

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and setting forth, for each person designated, the matters on which he will testify or product documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

U.S. MAGISTRATE OR CLERK OF COURT: Lee Dupuis

(BY) DUPUTY CLERK: s/BETTY McCuin

DATE: FEB. 12, 1987

This subpoena is issued upon application of the:

Plaintiff Defendant U.S. Attorney

QUESTIONS MAY BE ADDRESSED TO:

Johnnie A. Jones

JONES & JONES, Attorneys at Law

251 Florida Street, Suite 215

Baton Rouge, Louisiana 70801

Telephone: 504/383-8573

RETURN OF SERVICE¹

RECEIVED BY SERVER:

DATE: February 13, 1987

PLACE: Jones & Jones, Attorneys at Law

251 Florida Street, Suite 215, Baton Rouge, LA
70801

SERVED:

DATE: February 13, 1987

PLACE: First Union Mortgage Corporation

3636 S. Sherwood Forest Blvd., Baton Rouge, LA
70816

SERVED ON (NAME): Pam Kinamore

FEES TENDERED: YES NO / AMOUNT \$ None

SERVED BY: Lisa S. Milo

TITLE: Process Server

¹ As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

STATEMENT OF SERVICE FEES

TRAVEL:

SERVICES: \$15.00

TOTAL: \$15.00

DECLARATION OF SERVER²

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on (DATE) February 13, 1987

Signature of Server:

s/LISA S. MILO
Lisa S. Milo
12213 Littlewoods Drive
Baton Rouge, LA 70807

ADDITIONAL INFORMATION:

² "Fees and mileage need not be tendered to the deponent upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedures)."

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ULRICH HUYSSEN,

Plaintiff,

v.

FIRST UNION MORTGAGE CORPORATION,

Defendant

CASE NUMBER 86-77-A

DEPOSITION SUBPOENA

TYPE OF CASE: CIVIL CRIMINAL

SUBPOENA FOR: PERSON DOCUMENT(S) OR
OBJECT(S)

TO:

Brian Hollenback, Former Manager
FIRST UNION MORTGAGE CORPORATION
% Baton Rouge Mortgage, Inc.
8738 Quarters Lake Road
Baton Rouge, Louisiana 70809
Telephone: 504/922-9146 or 9141

YOU ARE HEREBY COMMANDED to appear at the
place, date, and time specified below to testify at the taking of
a deposition in the above case.

PLACE:

Metropolitan Reporters
Taylor Building, Suite 315
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-1700

DATE AND TIME:

Monday, February 23, 1987, 9:30 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

1. Any and all documentations in your possession, custody, and control in connection with the loan Application of ULRICH HUYSSEN, dated August 29, 1984, under September 18, 1984, submission date to FIRST UNION MORTGAGE CORPORATION as Account Number 048-018436 (from Baton Rouge, Louisiana Branch), requesting an extension of credit in the amount of \$30,640.00, or an aggregate amount of \$30,900.00.
2. Any and all documentations which show how the "Income/Debt Ratio" was calculated.
3. The entire minutes of the Underwriting Department of First Union Mortgage Corporation (FUMC) relative and pertaining to the Loan Approval of the application of ULRICH HUYSSEN, dated August 29, 1984.
4. The "Loan Register" of the Baton Rouge Branch of FUMC for the period commencing June 1, 1984, and ending December 31, 1984, inclusively.

*If not applicable, enter "none."

5. The roster or a list of the names and addresses of Loan Officers, or members of the Underwriting Department of FUMC, who calculated the "Income/Debt Ratio" relative or pertaining to the loan Application of ULRICH HUYSSEN, dated August 29, 1984, under submission date of September 18, 1984, to FUMC from its Baton Rouge, Louisiana Branch, under Account Number 048-018436.

6. Any and all documentations which FUMC forwarded or submitted to the Comptroller of the Currency, in both Washington and the Atlanta Offices of the Comptroller of the Currency, relative and pertaining to FUMC's handling of the loan Application of ULRICH HUYSSEN, dated August 29, 1984. (Referenced under Correspondence Number 0620850003260, Federal Trade Commission, Washington, DC 20580, letter dated 29 October 1984.)

Please see additional information on reverse

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and setting forth, for each person designated, the matters on which he will testify or product documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

U.S. MAGISTRATE OR CLERK OF COURT: Lee Dupuis

(BY) DUPUTY CLERK: s/BETTY McCAUIN

DATE: FEB. 12, 1987

This subpoena is issued upon application of the: Plaintiff Defendant U.S. Attorney

QUESTIONS MAY BE ADDRESSED TO:

Johnnie A. Jones

JONES & JONES, Attorneys at Law

251 Florida Street, Suite 215

Baton Rouge, Louisiana 70801

Telephone: 504/383-8573

RETURN OF SERVICE¹

RECEIVED BY SERVER:

DATE: February 13, 1987

PLACE: Jones & Jones, Attorneys at Law

251 Florida Street, Suite 215, Baton Rouge, LA
70801

SERVED:

DATE: February 13, 1987

PLACE: First Union Mortgage Corporation

8738 Quarters Lake Road, Baton Rouge, LA 70809

SERVED ON (NAME): Brian Hollenback

FEES TENDERED: YES NO / AMOUNT \$ None

SERVED BY: Lisa S. Milo

TITLE: Process Server

¹ As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

STATEMENT OF SERVICE FEES

TRAVEL:

SERVICES: \$15.00

TOTAL: \$15.00

DECLARATION OF SERVER²

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on (DATE) February 13, 1987

Signature of Server:

s/LISA S. MILO
Lisa S. Milo
12213 Littlewoods Drive
Baton Rouge, LA 70807

ADDITIONAL INFORMATION:

² "Fees and mileage need not be tendered to the deponent upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedures)."

APPENDIX 'O'

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

**ULRICH HUYSSEN,
Plaintiff,
versus
FIRST UNION MORTGAGE CORPORATION,
Defendant.**

**CIVIL ACTION NO. 86-077
SECTION 'A'**

MOTION FOR A NEW TRIAL

NOW INTO COURT — through his undersigned counsel of record, and pursuant to Rules 7(b)(1) and 59(a) of the Federal Rules of Civil Procedure, and Rule 5 of the General Rules of this Court — comes the plaintiff, ULRICH HUYSSEN, and moves the Court to set aside the findings of fact and conclusions of law heretofore filed herein and to vacate and set aside the judgment herein entered on December 19, 1988 (which was received by Plaintiff's counsel of record on December 20, 1988), and to grant Plaintiff a *new trial* on the following grounds, to-wit:

1. Newly discovered and material evidence, discovered since the trial, and which could not have been obtained on the trial by the exercise of reasonable diligence — simply, because Plaintiff relied upon the pretrial discovered evidence, the

Defendant's (FUMC's) *Lending Policy Manual* (Joint Exhibit 9), page, 37, Section 300, Paragraph (d), and had no reason to believe that the witness, Ralph E. Richardson, would, under Oath, in anywise testify contrarily thereto — as more fully appears by references to the communications between the plaintiff, ULRICH HUYSSEN (pseudonym, *Steve Starr*), and Bob G. Black, Branch Manager of First Union Home Equity Corporation (formerly, First Union Mortgage Corporation (FUMC)), and the Affidavit of the plaintiff, ULRICH HUYSSEN, all of which being attached and made a part hereof as if herein set forth at length. [Cf. New Trial *Exhibit-A*, and New Trial *Exhibit-B*, respectively.]

2. The Court erred in its failure to submit the case to the *jury* after the presentation of all evidence by both parties; and to have the issue: Whether, based on the evidence adduced, the Defendant had violated Plaintiff's protected rights under the Equal Credit Opportunity Act and discriminated against him based on religious and national origin?

3. The findings and judgment are contrary to the law and the evidence.

4. The judgment is erroneous because it is based on false and erroneous evidence.

For these reasons the Court should grant this motion for a new trial, or amend the findings of fact and conclusions of law, vacate and set aside the judgment entered in this case on December 19, 1988, and enter a judgment in accordance with the facts and equities in the case.

Respectfully submitted,
Attorneys for Plaintiff:

s/JOHNNIE A. JONES
Johnnie A. Jones, Trial Attorney
and
Ann S. B. Jones
JONES & JONES
Attorneys at Law
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

DATED: December 29, 1988

CERTIFICATE OF SERVICE

Undersigned counsel of record for the plaintiff, Ulrich Huyssen, does hereby certify that a copy of the above and foregoing Motion for New Trial, together with the companioned Exhibits, Affidavit, Memorandum and Notice of Motion are, by regular United States Mail, first-class postage prepaid, or by hand-delivery, being forwarded to the opposing counsel of record, whose address is as follows:

Ms Kelly Mangum Wilkinson
and
Mr Jose R Tarajano
RUBIN CURRY CLOVIN & JOSEPH
A Professional Law Corporation
One American Place Suite 1400
Baton Rouge, Louisiana 70825
Telephone: 504/383-1400

Baton Rouge, Louisiana, this 29 day of December, 1988.

s/JOHNNIE A. JONES
Johnnie A. Jones, Trial Attorney
and
Ann S. B. Jones
JONES & JONES
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

Steve Starr
2823 Westerwood Dr.
Baton Rouge, LA 70816

First Union Home Equity Corporation
N.W. Office Center
4334 N.W. Expressway, Suite 214
Oklahoma City, OK 73116

Dec. 13th, 88

Dear Mr. Black,

Thank you very much for sending me your loan application forms! Would you please kindly advise me regarding a couple of further questions yet.

I have seen an Income/Debt calculation Form of one mortgage company, where all income was put into a 30% tax bracket. Is First Union as example reflecting the new tax change and deducting 28% for tax considerations?

There also had been two separate columns for income, one for "Taxable Income" and one for "Non Taxable Income." Would First Union put the amounts like depreciation amounts under "Non Taxable Income?" And what other kind of income could possibly go under that kind of the bracket? I personally think that depreciation must be treated as non taxable, but I must know for sure since my depreciation is so very considerable and 28% or 30% taxes (whatever) would make a good monthly amount of difference!

Looking forward to hearing from you soon! With kind regards
and thanks,

s/STEVE STARR
Steve Starr

[New Trial Exhibit - A]

First Union Home Equity Corporation
Northwest Office Center
4334 Northwest Expressway, Suite 214
Oklahoma City, Oklahoma 73116
405 848-4455

Steve Starr
2823 Westerwood Dr.
Baton Rouge, La. 70816

December 22, 1988

Dear Mr. Starr,

In response to your letter received 12/16/88, I have enclosed a copy of First Union's sole proprietorship worksheet. This form shows the method in which First Union calculates Schedule C income. This bottom-line income is taxed at 30% and 55% of the resulting net income is considered available for debt service.

You will note that the worksheet does not address the matter of rental depreciation. The reason for this is that rental depreciation is added to the above calculation as non-taxable income.

I hope this answers your questions with regard to Schedule C and rental income. Should you have further questions or if I can be of further assistance, please advise.

Regards,

s/BOB G. BLACK
Bob G. Black, Branch Manager

**SOLE PROPRIETORSHIP WORKSHEET FOR
INCOME AVAILABLE FOR DEBT SERVICE**

APPLICANT'S NAME:

ADDRESS:

BUSINESS NAME:

FUHEC BRANCH/NUMBER:

YEAR (Most current year):

INCOME SOURCE: Income from Sole Proprietorship
(see page 17)

LOCATION: Schedule C

INCOME: \$

INCOME SOURCE: Depreciation of Business Assets
(see page 17)

LOCATION: Schedule C

INCOME: \$

INCOME SOURCE: Interest on Business Indebtedness
(see page 18)

LOCATION: Schedule C

INCOME: \$

INCOME SOURCE: Rent on Office (in home only)
(see page 18)

LOCATION: Schedule C

INCOME: \$

INCOME AVAILABLE FOR DEBT SERVICE:

The figures reported on this worksheet are accurate and fully comply with the definitions provided in the accompanying guide.

Signed:

IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA

ULRICH HUYSSEN,
Plaintiff,
versus
FIRST UNION MORTGAGE CORPORATION,
Defendant.

CIVIL ACTION NO. 86-077
SECTION 'A'

AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION FOR NEW TRIAL

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

ULRICH HUYSSEN, the plaintiff in the above-captioned action, being first duly sworn, says:

[New Trial Exhibit - B]

I am the Plaintiff in the above-captioned action. I understand that I am asking the Court to give me a new trial in my suit against the defendant, FIRST UNION HOME EQUITY CORPORATION (formerly First Union Mortgage Corporation (FUMC), who I have sued in this Federal Court. I have read, and I have had read and explained to me my *motion for new trial*; and I agree with its contents. I was in Court when my expert witness, Dr. Jan W. Duggar, testified that FUMC had calculated Plaintiff's *income-to-debt ratio* inconsistent with and contrary to its own *Lending Policy Manual* (Joint Exhibit-9), page 37, Section 300, Paragraph (d), which provides:

(d) Add to this figure any non-taxable income shown in the column for "non-taxable" income.

That he (Plaintiff-Affiant) also knows that his expert witness, Dr. Jan W. Duggar, testified that based on information taken from Plaintiff's 1983 and 1982 Federal Income Tax Returns (Plaintiff's *Exhibits-1* and *2*, respectively) he (Dr. Duggar) had made an independent calculation of Plaintiff's *income-to-debt ratio* under the provided formula detailedly spelled out in FUMC's *Lending Policy Manual*, and found Plaintiff's *income-to-debt ratio* to be acceptable for the extension of credit by FUMC to Plaintiff in the amount of (\$30,900.00) the loan sought by Plaintiff.

Plaintiff's Expert witness, Dr. Jan W. Duggar, also, testified that upon examination of the material furnished to him for study and examination in his preparation to submit affidavits in Opposition to Defendant's Motion for Summary Judgment

and to furnish testimony in the trial of this lawsuit, he (Dr. Duggar) discovered that Plaintiff's *income-to-debt ratio* was acceptable for the extension of credit by FUMC to Plaintiff under the calculation(s) of *income-to-debt ratio* made by FUMC upon the submission of Plaintiff's Loan Application, and at all times prior to the commencement of this lawsuit.

I, ULRICH HUYSSEN, the plaintiff in this lawsuit, was, also, in Court during the trial of this lawsuit when FUMC's witness, Mr. Ralph E. Richardson, the underwriter or loan approval officer for FUMC, testified that FUMC treats/considers *depreciation* or rental depreciation as *taxable income*, with respect to all such loan applicants as myself, notwithstanding that FUMC's *Lending Policy Manual* provides otherwise.

Since the trial of my case, this lawsuit, I have contacted and consulted by telephone with several Branch Managers of FIRST UNION HOME EQUITY CORPORATION (formerly, FUMC) and made the same inquiry of them as I did as appearing from my attached letter of December 13, 1988, by me under the pseudonym, *Steve Starr* to Mr. Bob G. Black, Branch Manager of First Union's Northwest Office Center in Oklahoma City, Oklahoma, who advises in Paragraph 2 of his letter of December 22, 1988 (which is in response to Plaintiff's letter of December 13, 1988), that:

"You will note that the worksheet does not address the matter of *rental*. The reason for this is that *rental depreciation* is added to the above calculation as *non-taxable income*."

Appearing from the many irregularities appearing of record in the handling of my loan application by FUMC, it is evidenced that FUMC resulted to disparate treatment discrimination and denied the extension of credit to me for reasons other than the legitimate reason it articulates, which is stated by FUMC to be for insufficient income, or rather, my lack of ability to service the debt.

s/ULRICH HUYSSEN
Ulrich Huyssen

SWORN TO AND SUBSCRIBED, Before Me, at Baton Rouge, Louisiana, on this 29 day of December, 1988.

s/JOHNNIE A. JONES
Johnnie A. Jones
Attorney/Notary Public

Page 4 of [New Trial Exhibit - B]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA

ULRICH HUYSSEN,
Plaintiff,
versus
FIRST UNION MORTGAGE CORPORATION,
Defendant.

CIVIL ACTION NO. 86-077
SECTION 'A'

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR NEW TRIAL

MAY IT PLEASE THE COURT:

This memorandum is in support of Plaintiff's motion for new trial, in a case which commenced as a *trial by jury*; and in which all of the evidence was taken before the *jury*; but, however, the Court being of the opinion that the evidence and the law was clearly in favor of the defendant, FIRST UNION HOME EQUITY CORPORATION (formerly, First Union Mortgage Corporation (FUMC)), granted the Defendant's motion for directed verdict, without having the issue of: Whether from the evidence adduced the *jury* — being comprised of reasonably prudent persons — could arrive at and

return a verdict finding that FUMC's articulated reason for its denial of extension of credit to plaintiff, ULRICH HUYSSEN, was a pretext to discriminate against him, based on religion and national origin, in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 et seq.?

It is the duty of trial judge to set aside verdict and grant new trial if, in his opinion, verdict is based upon evidence which is false or if verdict results in miscarriage of justice, and trial court is empowered to do this even though there may be substantial evidence which would prevent direction of verdict. *Isley v. Motown Record Corp.*, 69 F.R.D. 12 (DC NY 1975)

Similarly Rule 59(a)(2) allows a new trial to be granted in a nonjury action if a new trial might be obtained under similar circumstances in a jury action under 59(a)(1). Cf. *U.S. v. 5.77 Acres of Land, More or Less, In Borough of Brooklyn, Kings County*, 3 F.R.D. 298 (DC NY 1944); *Timken Co. v. United States*, 569 F. Supp. 65,67 (C.I.T. 1983); *Ionian Shipping Co. v. Tyson Shipping Co.*, 49 F.R.D. 334 (DC NY 1969).

Federal district court may, in a proper case, grant a new trial because of fraud on the court, misconduct of a party, or newly discovered evidence, or whenever justice requires relief; whether relief is proper is a matter addressed to the discretion of the court; among the factors that may be considered are whether the movant actually was prejudiced and, if so, whether the movant could have done anything at trial to avoid the prejudice. *Frankel v. Lull Engineering Co.*, 334 F. Supp. 913 (DC Pa. 1971).

In considering motion for new trial, trial Judge's discretion goes further than mere inquiry as to sufficiency of evidence and even where there is substantial evidence, judge may set aside verdict for reason

that it is against clear weight of evidence, that damages are excessive, or that substantial errors occurred in admission or rejection of evidence. *Keystone Floor Products Co. v. Beattie Mf. Co.* 432 F. Supp. 869, 877 (DC Pa. 1977).

Due diligence standard was inapplicable to motion to vacate judgment or for new trial on basis of alleged perjurious testimony. *Tas Intern. Travel Service, Inc. v. Pan American World Airways, Inc.*, 96 F.R.D. 205 (DC NY 1982)

The defendant's witness, Mr. Ralph E. Richardson, who gives and makes the final dispositions of all loan applications for extension of credit made to FUMC, testified, unequivocally, that all such loan applicants falling in the category of the Plaintiff were treated exactly the same and non-disparately; or was not in anywise discriminated against. This testimony of Mr. Richardson is refuted by Mr. Black's letter [New Trial Exhibit-A].

In considering whether a given ground has not been advanced in the motion made by the party, it should be borne in mind that the particularity called for it stating the grounds for a new trial motion is the same as that required for all motions by Rule 7(b)(1), which does not require ritualistic details; but rather a fair indication to court and counsel of the substance of the grounds relied on. Cf. *Lebeck v. Williams A. Jarvis Co.*, 250 F. 2d 285 (CA3 1957); *Tsai v. Rosenthal*, 297 F. 2d 614 (CA8 1961); *General-Motors Corp. v. Perry*, 303 F. 2d 544 (CA7 1962); *Grimm v. California Spray-Chemical Corp.*, 264 F. 2d 145 (CA9 1959); *Cooper v. Midwest Feed Products Co.*, 271 F. 2d 177 (CA8 1959).

The Court should grant the Plaintiff's motion for new trial, or amend the findings of fact and conclusions of law or make new findings of fact and conclusions of law, vacate and set

aside the judgment entered in this cause on December 19, 1988 (which was received by Plaintiff's counsel of record on December 20, 1988), and enter a judgment in accordance with the facts and equities in the case.

Respectfully submitted,
Attorneys for Plaintiff:

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Johnnie A. Jones, Trial Attorney
and
Ann S. B. Jones
JONES & JONES
Attorneys at Law
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251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: (504) 383-8573

Date: December 29, 1988



FILED
FEB 28 1990

JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1989

ULRICH HUYSSEN,

Petitioner,

v.

FIRST UNION MORTGAGE CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION

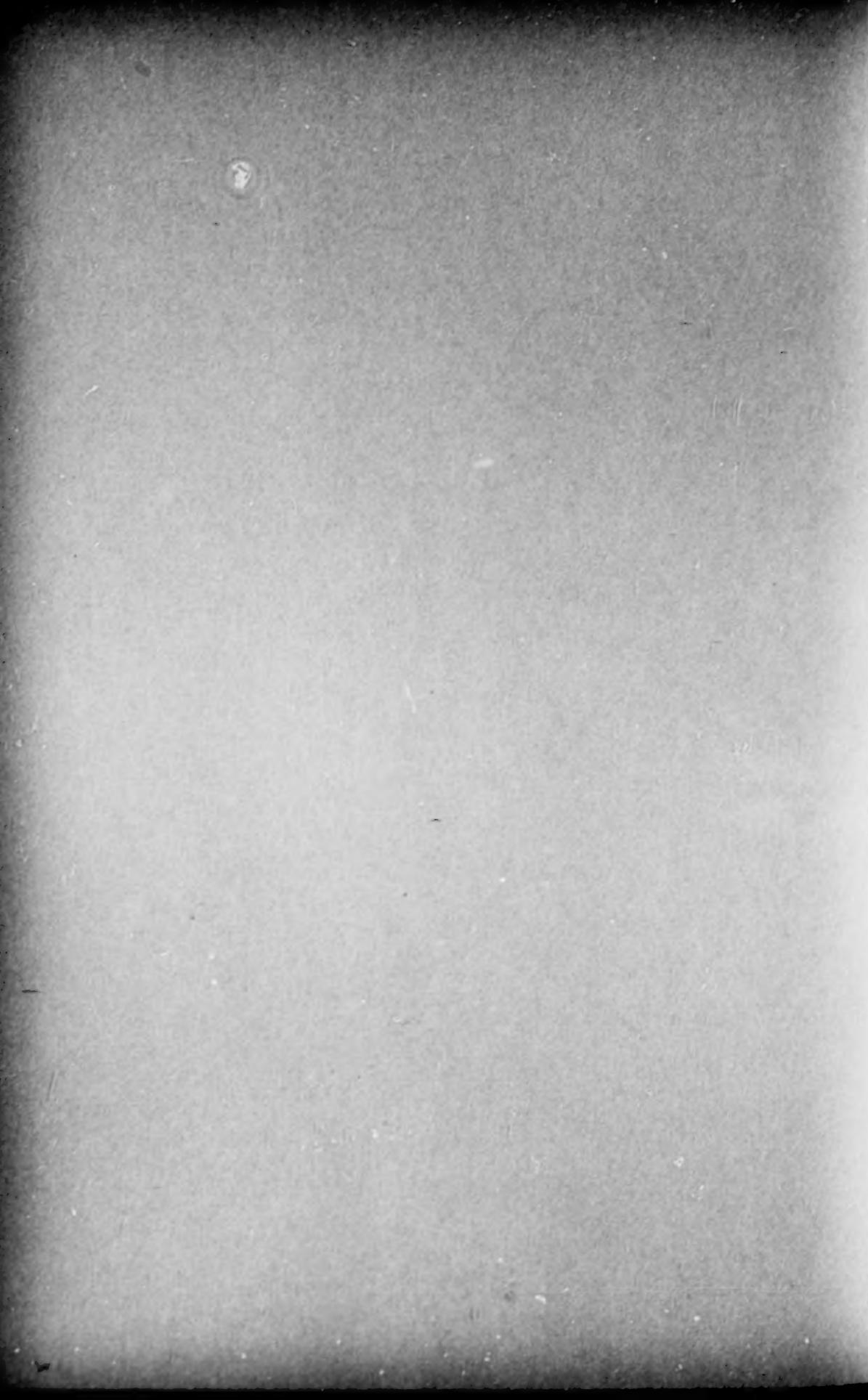
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Counsel for Respondent

February 28, 1990



QUESTIONS PRESENTED

1. In an Equal Credit Opportunity Act case in which the plaintiff claims he was denied a loan because of his national origin and religion, may the district court direct a verdict against a plaintiff who presents no evidence that he was qualified for the loan, that he was treated differently from any other applicant, or that the defendant's reason for denying the loan was pretextual?
2. Did the district court abuse its discretion by denying a new trial motion when the "newly discovered evidence" would not affect the outcome of the case and was readily available in pretrial discovery?

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First Union Home Equity Corporation, formerly known as First Union Mortgage Corporation*, submits this Brief in Opposition to the Petition for a Writ of Certiorari received on February 2, 1990.

STATEMENT OF THE CASE

Petitioner, Ulrich Huyssen ("Huyssen"), is a German citizen, Christian minister, and self-employed businessman. In 1984 he applied for a \$30,900.00 loan from the Baton Rouge, Louisiana office of First Union Home Equity Corporation ("First Union"). His loan application was denied by First Union's North Carolina home office because the ratio of his income to his debt repayment obligations was inadequate. In calculating Huyssen's income, First Union followed its then standard, conservative practice of treating depreciation shown on his tax returns as taxable, rather than non-taxable, income. Huyssen sued First Union under the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691, *et seq.*, for \$1,500,000.00, claiming that First Union discriminated against him because he is a German and a Christian.

Huyssen presented a disparate treatment claim to the district court (Petition App. at 2h-3h). The parties stipulated that he is a German and a Christian and that he was denied a loan (Petition App. at 9h-10h). However,

* The respondent, First Union Home Equity Corporation, formerly known as First Union Mortgage Corporation, is a wholly-owned subsidiary of First Union National Bank of North Carolina, which is a wholly-owned subsidiary of First Union Corporation.

Huyssen presented no evidence either that he was qualified for the loan under First Union's standards or that he was treated differently from any other loan applicant. Huyssen based his case on his expert's testimony that, unlike First Union, the expert considered the depreciation on Huyssen's tax returns as non-taxable, rather than taxable, income in evaluating the loan application, and using this method Huyssen's income-to-debt ratio was sufficient to qualify him for the loan. He made no attempt to show that First Union's credit standards or treatment of depreciation somehow discriminated against Germans, Christians, or any other protected person.

At the close of all evidence, the district court directed a verdict against Huyssen, stating that the only thing he had proven was that his loan was denied. The district court found that the explanation for the loan denial offered by First Union had been totally unrebutted and unchallenged, other than by Huyssen's expert testimony which was "not of great benefit to the jury" (Petition App. at 2b).

After the trial in 1988, Huyssen approached a First Union office in Oklahoma under false pretenses and learned that First Union had begun treating depreciation as non-taxable income, a reversal of its earlier practice. First Union changed its treatment of depreciation over two years after denying Huyssen's application. Neither during discovery nor at trial did Huyssen ask whether First Union had changed its practice. Nevertheless, Huyssen moved for a new trial on the basis of this "newly discovered evidence." The district court denied the motion, finding that the "new evidence" was not

material, because the change of procedure occurred long after the plaintiff's loan application.

On appeal, the court of appeals summarily affirmed in an unpublished, *per curiam* opinion. *Huyssen v. First Union Mortgage Corp.*, No. 89-3232 (5th Cir. Oct. 18, 1989).

REASONS FOR DENYING THE WRIT

This case presents no basis for granting a Writ of Certiorari. The petitioner cites not a single reason included in Rule 10 to justify his petition. Perhaps this is understandable, because the court of appeals decision conflicts with no decision of this Court or any other court, did not depart from the accepted and usual course of judicial proceedings, and dealt only with settled federal law. Huyssen simply disagrees with the lower courts' determination that a jury should not be allowed to speculate on his claim when he presented absolutely no evidence of discrimination.

Furthermore, Huyssen now attempts to raise issues that he never presented to the district court. In the district court he never pursued a discrimination claim under the disparate impact theory of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), never presented a breach of contract claim, and never argued that this case somehow involved the Seventh Amendment right to trial by jury.

I. THE COURT OF APPEALS DECISION DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT OR ANY OTHER FEDERAL COURT.

In Equal Credit Opportunity Act ("ECOA") and other discrimination cases, a plaintiff may present a claim under the disparate impact theory of *Griggs v. Duke Power Co.*, the disparate treatment theory under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), or both. Huyssen stipulated that he was pursuing a disparate treatment claim (Petition App. at 9h-10h). In an ECOA disparate treatment case, a plaintiff may establish a prima facie case by presenting facts to support a reasonable inference that his credit application was rejected, more likely than not, because of unlawful discrimination. *Gross v. United States Small Business Admin.*, 669 F. Supp. 5053 (N.D.N.Y. 1987), *aff'd*, 867 F.2d 1423 (2d Cir. 1988). An ECOA disparate treatment case has four essential elements:

- (1) The plaintiff is a member of a protected class;
- (2) The plaintiff applied and was qualified for a loan;
- (3) Despite his qualification, was rejected; and
- (4) Persons of different national origin or religion of similar credit stature were treated more favorably by the creditor. *Gross, supra*, 669 F. Supp. at 53.

Huyssen failed to prove his case. In fact, the only elements Huyssen established were that he was a German and a Christian, and that his loan application was denied.

The crux of Huyssen's complaint seems to be that he disagrees with First Union's standards of creditworthiness. He offered evidence that, under standards different

from First Union's, he would qualify for a loan. This was the thrust of his expert's testimony. The ECOA, however, expressly recognizes creditworthiness as a legitimate creditor concern. 15 U.S.C. § 1691. Regulation B, the ECOA's implementing regulation, permits the use of subjective, non-discriminatory credit underwriting standards. 12 C.F.R. §§ 202.6(a), (b); 202.7(d). Huyssen simply refuses to accept the fact that his income was insufficient to pay his debt, under First Union's permissible standards.

Huyssen presented no evidence that he qualified under First Union's criteria. He presented no evidence about any other credit applicant, much less that anyone was treated more favorably than he was. Huyssen presented no evidence that First Union's calculation of his income available to pay his debts singled him out for unfavorable treatment. Huyssen presented no evidence that First Union used its established credit practices as a pretext to deny him a loan. This is not a case in which the lower courts' decisions conflict with any other precedent; instead, the plaintiff simply presented no evidence on any of the contested elements of his claim. The court of appeals and the district court followed established precedent in holding that Huyssen failed to present a case sufficient for submission to a jury. See, e.g., *Williams v. First Federal Savings & Loan Association*, 554 F. Supp. 449, aff'd, 697 F.2d 302 (2d Cir. 1982).

II. THIS CASE PRESENTS NO IMPORTANT ISSUES OF FEDERAL LAW.

Huyssen makes no claim that his petition presents any important question of federal law. The only conceivable important federal question in the petition is his belated Seventh Amendment issue. Huyssen seems to argue that because he was entitled to a jury trial, which he received, the Seventh Amendment requires submission of the case to the jury (Petition at 11-13). He apparently argues that even without presenting a *prima facie* case, he is entitled to have the jury speculate on some "natural inference" of discrimination, which he believes arose from the scanty evidence he did present. In essence, he argues that the Seventh Amendment prohibits a directed verdict under Rule 50 of the Federal Rules of Civil Procedure in any case in which a jury trial is properly demanded, regardless of any lack of evidence.

While this may have been an important issue of federal law long ago, the constitutionality of Rule 50 is now indisputable. *Galloway v. United States*, 319 U.S. 372 (1943); *Helene Curtis Industries, Inc. v. Pruitt*, 385 F.2d 841 (5th Cir. 1967), cert. denied, 391 U.S. 913 (1968). Huyssen has no reason to ask this Court to reconsider that established law.

III. THE PETITION SEEKS TO RAISE ISSUES NEVER PRESENTED TO THE TRIAL COURT AND NOT PRESERVED ON APPEAL.

In his pretrial stipulations, Huyssen elected to pursue a disparate treatment discrimination claim (Petition App. at 9h-10h). His theory was an utter failure. On appeal he decided to change his claims. He raised for the first time

in the court of appeals the disparate impact theory of discrimination under *Griggs v. Duke Power Co.* He argues that this Court should consider the "effects of [First Union's] practice," despite the fact that he established no record whatsoever about any such effects (Petition at 11). He neither pursued discovery nor presented evidence that First Union's credit standards somehow adversely affected any protected persons. To prevail on a disparate impact claim, he must prove the proposition that treating depreciation as taxable income discriminates against Germans or Christians. Evidence, not unsupported "natural inference," is required to meet this burden.

After trial, Huyssen decided to raise, for the first time, a "contract" claim. He once again makes a contract argument, without any support in the record, in this Court (Petition at 13-14). He claims that he was a "non-preparatory user" of First Union's lending manual, so it should be construed in his favor. The lending manual is an internal document. He is not a "user" at all. The court of appeals ignored his argument. This Court should too.

Finally, Huyssen failed to raise or preserve on appeal any claim that he was deprived of his Seventh Amendment right to a jury trial when the district court directed a verdict. He only mentioned the Seventh Amendment in passing in his court of appeals brief. Any lawyer should know that an issue must be presented below to be preserved on appeal, or to be presented for review in this Court. *Adickes v. Kress & Company*, 398 U.S. 144, 147, n. 2 (1970), *California v. Taylor*, 353 U.S. 553, 557, n. 2 (1957), *Tyrrel v. District of Columbia*, 243 U.S. 1 (1917). These belated issues do not justify a grant of certiorari.

Huyssen calls for "the most imaginative use" of ECOA; but his case rests on fantasy, not just imagination. He chose to pursue post-trial chicanery rather than pre-trial discovery. His unrelenting shout of "discrimination" is no substitute for facts or evidence. Despite years of discovery, Huyssen found nothing, because no discrimination occurred. He had every opportunity to be heard at trial, on his motion for a new trial, and in the court of appeals; but he has persuaded no one, other than himself, that he is a victim of discrimination. He has not one whit of evidence. First Union did not discriminate against him because he is a Christian or a German. The directed verdict was absolutely right. The denial of a new trial was absolutely right. The affirmance by the court of appeals was absolutely right. His dogged pursuit of this meritless claim must come to an end.

CONCLUSION

The Petition for a Writ of Certiorari is frivolous. It does not even attempt to raise an issue appropriate for certiorari under Rule 10. The Petition should, therefore, be denied.

Respectfully submitted,

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February 28, 1990